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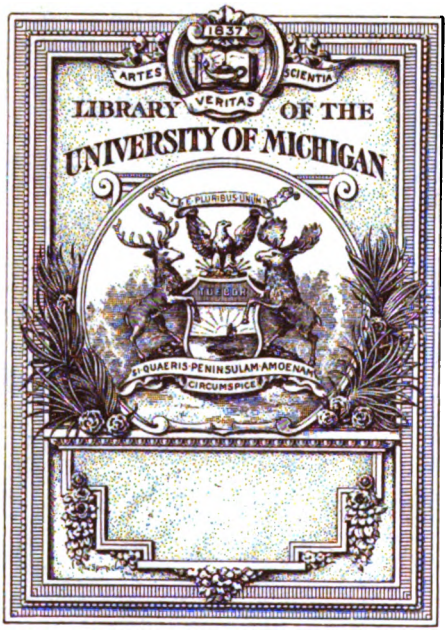

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A

VIEW

OF

THE HARD-LABOUR BILL;

BEING

AN ABSTRACT OF A PAMPHLET,

INTITULED,

"DRAUGHT OF A BILL, TO PUNISH BY IMPRISONMENT AND HARD LABOUR, CERTAIN OFFENDERS; AND TO ESTABLISH PROPER PLACES FOR THEIR RECEPTION:"

INTERSPERSED WITH

OBSERVATIONS RELATIVE TO THE SUBJECT OF THE ABOVE DRAUGHT IN PARTICULAR,

AND TO

PENAL JURISPRUDENCE IN GENERAL.

BY JEREMY BENTHAM,
OF LINCOLN'S INN, ESQ.

ORIGINALLY PUBLISHED IN 1778.

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PREFACE.

When the proposed Bill, of which the ensuing sheets are designed to give a view, first fell into my hands, I was employed in finishing a work of some bulk, in which I have been treating the subject of *punishment* more at large. In that work, I should have come in course to speak of the particular species of punishment which is the subject of this bill. In that work, therefore, several of the observations would have come in course to be introduced, which I have here subjoined to several parts of the text I have been abstracting: and being there digested into a method, and forming a part of a system to which I have been giving that degree of regularity which it has been in my power to give it, would probably have come with more force, and shown to more advantage, in company with the rest. On this account, had I been at liberty with respect to time, I should rather have wished to have published the whole together first, before I had detached from it these scattered fragments. The publication, however, of the proposed bill in question, with the intelligence that accompanied it, effectually precluded any such option. To have delayed the publication of this part of my principal work, till the bill had been brought in and passed, would have been to delay it till that season had been over, in which, if in any, such parts of it as relate to the present subject, promised to be most useful.

When I had read Mr. Howard's book on Prisons, one fruit of it was, a wish still more earnest than what I had been led to entertain from theory, to see some general plan of punishment adopted, in which solitary confinement might be combined with labour. This capital improvement (for as such I cannot help regarding it) in penal legislation, I sat wishing, with scarce any mixture of hope, to see carried into execution: for somehow or other, the progress that had been already made in it near two years ago in the House of Commons,* had escaped me. How great, then, was my pleasure and surprise at seeing a plan (which had already been pre-announced by the Judges in their circuits,) originating, as appeared, from a high department in administration, and carrying with it every presumption of its being adopted; in which, not only almost all the excellent matter of the book I have been speaking of is engrafted, but many capital improvements superadded! This incident gave me fresh alacrity, and suggested fresh designs.

This bill (or draught of a bill, as it is called in the title, not having been as yet brought into Parliament) is accompanied with a Preface, short, indeed, but ample, masterly, and instructive. In this preface, an instructive but general idea is given of the theoretic principles upon which the plan of the bill is grounded; and a more ample and detailed account of the documents which furnished materials and reasons for the several provisions of detail. A history of the steps that have been taken in the formation and prosecution of the plan is also interwoven.

Upon this it will naturally enough be asked, What was the occasion, and what can be the use of the ensuing sheets? why publish them? I answer — Because the bill itself is in fact *not* published:† — because, were it published, the contents of it are not quite so perspicuous as I imagined they might be made: — because I hoped to be a means, in some degree, of forwarding the good purposes of it, by stating to the public, more in detail than it would have been competent either to the text or to the preface to have done, the reasons on which the leading provisions in it seemed to be grounded, and by suggesting a few hints in the way of correction or addition.

"Not perspicuous?" I think I hear somebody exclaiming: — "what Act of Parliament was ever more so?" None, I must confess, that I can think of: but this affords me no

* See Preface to the Bill, p. 5.

† I mean, in the sense ordinarily put upon the word *published*. It is not sold at any of the shops; it has no bookseller's nor printer's name; it seems to have been designed for the perusal, not of the world at large, but only of Members of Parliament, and of the Author's private friends.

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reason for retracting. The legislator, one would indeed naturally suppose, might (and if he might, why should not he?) speak his own meaning so plainly, that no one could speak it plainer; so concisely, that no one could render his expression more concise; in such a method, both as to matter and form, that no one could cast it into a better. He might, one should think: for what should hinder him? Is he the less qualified for making himself understood and remembered by being a legislator? If he did, then, as he might do, expositions would be useless, and abridgments would be impracticable. But does he?—consult the twelve immense volumes of Acts of Parliaments; to which another is in the way to add itself every three years.

Let me not all this while be understood to reflect censure on a great master of language, on whom nothing less than censure is intended. Had custom (that is, the law of Parliament) left him at liberty to follow the dictates of his own intelligence, little or nothing, I suppose, would have been left to any one else to add to it on the score of perspicuity: if (supposing the bill and the preface to come, as they purport to do, from the same hand,) it be reasonable to judge what he *could* have done, from what he *has* done. On this head I have scarce an idea of making any greater improvement on his draught than what he could have made, if he had pleased, and would, if he had thought proper. He thought, I suppose (if it occurred to him to propose the subject to his thoughts,) that one plan of reformation was enough to proceed upon at once. On the present occasion, his business was to reform a part of the system of punishment adopted by our legislation; not to go about reforming the legislative style. He has therefore, of course, conformed in a great measure to the style in use, though with a considerable defalcation from the usual complement of tautologies and redundancies: his publication being a draught of the very instrument which it is intended should pass into an act.

The present abstract of it having no pretensions to be considered in that light, I have held myself at liberty to afford the reader many of those assistances which parliamentary men, in all their authoritative publications, seem so studious to reject. I have therefore prefixed numbers to the sections: I have given them marginal contents: I have made frequent breaks in the letterpress: I have numbered, every now and then, the leading articles, which, though included together in one section, seemed to claim each of them a separate measure of attention; and, by allotting to each a separate line, have displayed them more distinctly than if lumped together in one unbroken mass. These, and other such typographical assistances, are no more than what it is common enough for writers, on the most ordinary subjects, to give their readers: nor would they be looked upon as singular, or indeed worth mentioning, but with respect to those intricate and important discourses which stand most in need of them.

Another, and rather more serious task, has been to break down the long sentences, into which this composition (being intended to be passed into an Act of Parliament) could not but have been cast into a multitude of shorter ones: to retrench the tautologies and superfluities with which this composition, though remarkably scanty on this head (being intended for an Act of Parliament,) could not but abound. In the course of these operations, I have here and there ventured to make some little alteration in the order of the several matters contained in the same section: but with entire sections I have nowhere taken the like liberty.

This abstract, then, (to mention a more general use that may be made of it) will of itself be sufficient to prove, that a sentence of any given length is capable of being cast into as many sentences, and, consequently, that each sentence is capable of being made as short as there can be occasion to desire. It is therefore of itself sufficient to divest the long-windedness of our *legislative* (one may say in general of our *legal*) style, of the plea of necessity, the only one which a man could think of urging in its favour. Had this been even my principal object, I should of all others have wished for a bill like this to work upon, for the same reason that grammarians take the works of Pope, and Swift, and Addison, for examples of solecisms in grammar.*

But to return. By the means above mentioned I will venture to hope, and that without any pretensions to make it a ground of vanity, that this abstract may be found to read somewhat more pleasantly than even the bill itself; and that on this head the reader, who means only to take a general view of the bill, and who is not in that line of duty or of study which would lead him to weigh words and syllables, may, as far as he thinks he can depend upon the fidelity of this copy, find it answer his purpose as well as the original.

I am sorry I cannot give equal satisfaction to his curiosity with respect to the Preface; in which the elegance of a style, which is the Author's own, has been at full liberty to display itself, unfettered by technical forms and prejudices. This I must not transcribe, nor can presume to imitate. The uncouth piles of parliamentary composition have not often been graced with such a frontispiece.

* See Bishop Lowth's Grammar, *passim*.

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Amongst other things we learn by it, is, that "the difficulties which towards the end of the year 1775 attended the transportation of convicts,"* gave great weight to the inducements, if they were not themselves the sole inducement, that led to the institution of this plan. It may be some consolation to us, under the misfortunes from which those difficulties took their rise, if they should have forced us into the adoption of a plan that promises to operate one of the most signal improvements that have ever yet been made in our criminal legislation. It may not even be altogether extravagant to suppose, that at the end we may be found to have profited not much less than we shall have suffered by these misfortunes, when the benefits of this improvement come to be taken into the account. For let it be of ever so much consequence that trade should flourish, and that our property should go on *increasing*, it seems to be of not much less consequence that our persons should be safe, and that the property we *have* should be secure. If, then, the efforts of our statesmen, to save the nation from the stroke of those adversities have not been attended with the success they merited, let them not make it an excuse to themselves for sinking into despondency. Let them rather turn their activity into a new channel: let them try what amends can be made, in some other line, to their own reputation, and to the public service: let them look at home; and if, after all that can be done, the nation must lose something in point of external splendour, let them try what they can gain for it in point of domestic peace.

I understand that the plan is not yet looked upon as absolutely completed, which may be one reason why the circulation of it has been hitherto confined to a few hands. The ample use, however, and liberal acknowledgment that has been made of the helps afforded by former volunteers, induced me to hope, that any lights that could be thrown upon the subject, from any quarter, would not be ill received.

Whatever farther additions or alterations the proposed bill may come to receive before it has been carried through the House, there seems to be no great likelihood of their bearing any very great proportion, in point of bulk, to the main body of the bill as it stands at present. And as it is not yet clear but that it may be carried through in the course of this session in its present state, it seemed hardly worth while to delay this publication in expectation of further materials that may either never come, or not in such quantity as to make amends for the delay. It will be an easy matter, if there should be occasion, to give a supplemental account of such new matter as may arise. The attention of the country gentlemen has already been drawn to the subject by the general accounts given of the plan by several of the judges on their circuits: and it should seem that no farther apology need be made for giving as much satisfaction as can be given in the present stage of the business, to the curiosity which a measure, so generally interesting, can scarce fail to have excited. That curiosity is likely to be farther raised by some fresh inquiries, which I understand it is proposed to institute in the House of Commons: and as the result of these inquiries comes to transpire, the use and application of it will be the better seen, by having so much of the plan, as is sketched out already, to refer to.

The haste with which, on the above accounts, it was thought necessary to send the ensuing sheets to the press, must be my apology for some inaccuracies which, I fear, will be discoverable in them, as well in point of method as of matter. It is not a month since the proposed bill first fell into my hands in the midst of other indispensable avocations.

The use of them, however, if they have any, will, I hope, not be altogether confined to the short period between the publication of them and the passing of the bill into a law. For when a great measure of legislation is established, though it be too firmly established to be in danger of being overturned, it is of use, for the satisfaction of the people, that the reasons by which it is or may be justified, be spread abroad among them.

Lincoln's-Inn, March 28, 1778.

* Page 1.

ADVERTISEMENT.

THE persons who are styled "*convicts*" in the ensuing abstract, are styled "*offenders*" in the proposed Bill. I gave them the former name, to avoid a confusion I found occur in speaking of them, at times when there was occasion to speak of such fresh offences as may come to be committed by the same persons during their confinement, or of certain other offences which the bill has occasion to prohibit in other persons.

In regard to *sex*, I make, in general, no separate mention of the *female*; that being understood (unless where the contrary is specified) to be included under the expression used to denote the *male*.

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A

VIEW

OF THE

HARD-LABOUR BILL.

THIS Bill has two capital objects: 1*st*, To provide a new establishment of Labour-houses all over England; 2*dly*, To extend and perpetuate the establishment already set on foot, for the confinement of convicts, to labour upon rivers. It consists of sixty-eight sections. The fifty-two first are employed upon the former of the above objects: the seven following upon the latter: and the remaining nine upon certain customary provisions of procedure, and a few other matters that apply alike to both.

First with regard to the establishment of Houses of Hard Labour. The first twenty sections are employed in making provision for the erection of the buildings, and for the appointment of the magistrates and other officers to whom the management of that business is committed. The remaining thirty-two sections are employed chiefly in prescribing the regimen to be observed in them when built.

So much for the general outline of this regular and well digested plan. Let us now take a view of the sections one by one.

The first Section, or Preamble, states the general considerations which determined the author to propose the establishments in question. These considerations are, the insufficiency of transportation for the purposes of example and reformation; the superior efficacy of a course of confinement and hard labour; and the unfitness of the present houses of correction for that purpose.

Observations.—Here would naturally be the occasion for a commentator to dilate more particularly than it would have been in character for the bill itself to have done, upon the inconveniences of the old punishment of transportation, which it meant to supersede, and the advantages of the new mode of punishment, which it is the object of it to introduce. This I shall have occasion to do at large hereafter; stating in course the advantages and disadvantages of each: but a slight and immethodical sketch is as much as the present design gives room for.

The punishment of transportation, in its ordinary consequences, included *servitude*, the punishment here proposed to be substituted in the room of it. At all events, it included *banishment*. These two it comprehended professedly and with design; besides an uncertain, but at any rate a very afflictive, train of preliminary hardships, of which no account was taken; amongst others, a great chance of producing death.

Taking it all together, it had a multitude of bad properties; and it had no good ones, but what it derived from servitude, or which are to be found in the latter punishment in a superior degree.

1. In point of proportion it was *unequal:* for a man who had money might buy off the servitude.* With regard to the banishment, it was again unequal; for nothing can be more unequal than the effect which the change of country has upon men of different habits, attachments, talents, and propensities. Some would have been glad to go by choice; others would sooner die.

2. It was *unexemplary:* what the convicts suffered, were it much or little, was unknown to the people for whose benefit it was designed. It may be proved by arithmetic, that the purpose of *example* is, of all the purposes of punishment, the chief.

3. It was *unfrugal:* it occasioned a great waste of lives in the mode, and a great waste of money in the expenses, of conveyance.

4. It did answer indeed, in some degree, the purpose of *disabling* the offender from

* In virtue of the Statute 4 Geo. I. c. 2, the Court used to contract with some person to convey the convict to the place of destination: thereupon the convict is made over "to the use of" the contractor and "his assigns," who are declared in general terms to "have a property or interest in" his "service," for the time specified in the sentence.

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doing further mischief to the community during the continuance of it; but not in so great a degree as the confinement incident to servitude. It has always been easier for a man to return from transportation, than to escape from prison.

5. It answered, indeed, every now and then, the purpose of *reformation:* But by what means? By means of the servitude that was a part of it. It answered this purpose pretty well; but not so well upon the whole, under the uncertain and variable direction of a private master, whose object was his own profit, as it may be expected to answer under regulations concerted by the united wisdom of the nation, with this express view.

Section II. provides in general terms for the erection of houses for the purposes of confinement and labour throughout England and Wales. These houses are to be entirely separate from all other public habitations, whether destined for the custody or punishment of offenders, or for the maintenance of the honest poor. The legal appellation they are directed to be called by, is that of *Houses of Hard Labour.*

Observations.—It might, perhaps, be as well to call them *Hard-Labour Houses*, or *Labour-Houses*, at once. This, or some other equally compendious, is the name that will undoubtedly be given them by the people at large; the tendency of popular speech being to save words and shorten names as much as possible. Such a name should be analogous to the names *Rasp-huys* [Rasping-house,] and *Spin-huys* [Spinning-house,] in use in Holland; and, in short, to our English word *Work-house.* The technical name would by this means be the same as the popular. This would, *pro tanto*, save circumlocution, and guard against error in law proceedings. Where departing from the popular forms of speech is not necessary, it is always inconvenient. So much for an object, which, perhaps, may be thought to be hardly worth the words that have been spent upon it.

Section III. is designed to make provision for the raising of the monies to defray the charges of purchasing ground and building; and it prescribes the proportions in which such monies, when raised, are to be distributed among the districts established in the next section for the purposes of the act.* These proportions it takes from the number of convicts that have been ordered for transportation, in each county, within the compass of a year, upon an average taken for seven years last past. A blank is left for the particular fund out of which the monies are to issue.

Observations.—The contribution by which these monies are to be raised, is made, we see, not a local, but a general one. A local tax, however, is that which seemed most obviously to suggest itself, since the expenditure is local; but a general one appears to be much preferable. Had the tax been local, it would have been raised upon the plan of the county taxes; it would by that means have fallen exclusively upon householders bearing scot and lot. But the benefit of it, be it what it may, is shared indiscriminately among the whole body of the people. Add to this, that the sums of money requisite for this purpose will probably be large. These, were they to be raised at once, in the several districts, in the manner of a county tax, would be apt to startle the inhabitants, and prejudice them against the measure.

As to the proportion in which the supplies are to be distributed among the several districts, this is taken, we see, from the average number of convicts. This was an ingenious way of coming at the extent it would be requisite to give to the respective buildings, and the terms allotted would naturally be proportioned to the extent. Rigid accuracy in this apportionment, does not seem, however, to have been aimed at. According to the method taken, the allowance to the smaller counties will be somewhat greater in proportion than to the larger. There are a great many counties whose average number is settled at *one:* the computation does not descend to fractions. This, if it be an error, is an error on the right side.

For two of the towns that are counties of themselves, no average number of convicts, I observe, is stated: these are, Newcastle-upon-Tyne and Haverfordwest.

Upon turning to the table subjoined to the bill, it appears, that at Haverfordwest there have been no convicts at all within the time in question. At Newcastle-upon-Tyne, the average is stated at five. The omission in the bill seems therefore to be accidental.

Section IV. provides for the payment and application of the monies mentioned in the preceding section. They are directed to be paid to committees of justices,† or their order, and applied to the building of the houses above mentioned. The deficiencies, if any, in the provision thus made, are to be borne afterwards by the districts.

By Section V., all England, including Wales, is cast, for the purposes of this act, into districts of a new dimension.‡ This division is made commensurate to the division into circuits, as well as to that into counties. A certain number of these districts are included in each circuit; and each district includes one or more counties. Towns, that

* See Table, col. 8th, p. 34.

† See Sect. VI.

‡ See Table, cols. 2 & 4.

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are counties of themselves, are put upon a footing, in this respect, with counties at large. London and Middlesex form each a district by itself. The whole principality of Wales, together with Cheshire and Chester, are included in one district. The whole number of districts is nineteen. The reason it gives for this junction of the counties is, that it will serve to lessen the expense.

Observations.—The circuit divisions, it seems, were thought too large; the county divisions too small; besides that the latter are unequal. This is the case more particularly with the towns that are counties of themselves, in comparison with some of the larger shires. The use of making the districts less than the circuits, and at the same time larger than the counties, is the adjusting the buildings to a convenient size. An establishment for the reception of a large number of persons may be conducted, as the preambular part intimates, at a proportionably less expense, than an establishment for the reception of a small number. The uses of making them less than the circuits, are two:—1*st*, The lessening the expenses of conveying the convicts from the place of trial to the place of punishment; 2*dly*, The lessening the trouble and expense of the justices, who are to travel out of their own counties, to the town where they are to meet to carry the act into execution. It is doubtless on the former principle, that we are to account for the comprising the twelve Welsh counties, together with Cheshire and the city of Chester, in one district; for in this district, extensive as it is, the average number of convicts has been found to be less than in any other. On the two latter principles, it may seem rather inconvenient that this district should be so large. It is to be hoped, on this account, that the situation chosen for the labour-house for this district will be as central as is consistent in other respects with convenience.

Section VI. establishes the committees of justices, who are to be appointed by the general sessions of their respective counties, to meet together for the purposes of carrying this act into execution at a particular place within each of the districts, within which their respective counties are included:* and it settles the proportion which the number of committee-men in each county is to bear to the number of committee-men in every other. These committees are empowered to appoint stated meetings (giving ten days notice) and to make adjournments. The committee-men are to be appointed at the next general sessions after the passing of this act.

Observations.—The power of sending justices as committee-men is given, we may observe, to all the counties at large, in various proportions, from one to five inclusive, likewise to all the town-counties except three—Berwick, Chester, and Haverford-west. Whether these omissions are accidental or designed, is more than I can take upon me to conjecture.

Section VII. provides against any failure in the sessions to appoint committee-men, or in the committee-men to take upon them their office. If at the next general sessions after the passing of the act, no committee-men should be appointed, or not enough, or if any should refuse, power is given to the *custos rotulorum* to supply the deficiency within three months.

Observations.—This provision seems to proceed on the supposition, that in some places the measure of the bill may prove unpopular among the country magistrates. By way of a spur to them, this power is therefore given to the *custos rotulorum:* but may it not be possible, especially in some of the remote counties (suppose the Welsh counties) that even the *custos rotulorum* may be tinctured with the local prejudices? It should seem there could be no harm, rather than there should be a gap in the execution of the act, in substituting the Lord Chancellor to the *custos rotulorum*, in the same manner as he is substituted to the sessions.

Section VIII. gives the sessions the power of changing their committee-men from year to year: also of supplying vacancies at any time when they may happen.

Observations.—For conformity's sake, might not this latter power, in default of the sessions, be given to the *custos rotulorum?* and, (if such an addition were to be adopted) in his default, to the Lord Chancellor?

Section IX. requires the committees to appoint each a clerk and treasurer, with such salaries as they shall think reasonable, removeable at pleasure: the treasurer to give security in proportion to the sum likely to come into his hands.†

Section X. appropriates the monies to be received by the committees, or their treasurer, to the uses of the act.

Section XI. appoints the place and time of the first meeting of the several committees;‡ empowering them (after choosing their chairman, clerks, and treasurer) to adjourn to any other time and place within the same district. It then directs them, at this or any subsequent meeting, to make choice of a piece or pieces of ground to build on, one or more for each district. The orders for this purpose are to be certified in London and Middlesex to the King's Bench, and else-

* See Table, cols. 5 & 3.

† See Table, col. 8.

‡ Ibid. col. 3.

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where to the judges on their circuits; except that, in the Welsh district, they are to be certified, not to any of the Welsh judges, but to those of Chester: in case of their disapproval, a second order is to be made, and so *toties quoties*: so also if the spot pitched upon be such as cannot be purchased under the powers given by the act.* With regard to the choice of the spot, it gives some directions. The committees are required to have regard to

1. The healthiness of the situation.
2. The facility of getting water.
3. The *nearness* to some trading town.
4. But to avoid choosing any place *within* a town, if any other convenient place can be found.
5. To give the preference to a place surrounded with water, if in other respects healthy and proper.

Observations.—With regard to the places of meeting, it seems rather extraordinary, that in the Welsh district, a place so far from central as Chester should be appointed. This obliges the whole body of committee-men from Wales to travel out of their principality; and a Pembrokeshire justice, who has to traverse all North and South Wales, may have, perhaps, near two hundred miles to go before he reaches the place of his destination. This inconvenience, indeed, is open, in some measure, to a remedy, by the power given to the committees to choose the place of their adjournment; but at any rate, be the place ever so central, in so large a district, it cannot but be very remote from the abodes of the greater part of the committee-men. On this account, more especially if the Welsh district is to remain undivided, might it not be proper to allow to the committee-men, at least to such as had to travel out of their own counties, a small sum (were it no more than ten shillings a-day) to help to indemnify them for their expenses? To many a magistrate, who might, in other respects, be better qualified for the business than a richer man, the expense (to say nothing of the trouble) of making frequent journies to such a distance as he might have occasion to travel to, might be an objection sufficient to prevent his acceptance of the office. There seems, at any rate, to be much more reason for giving a salary to these committee-men, than to persons to be appointed visitors to the labour-houses;† since the visitors *may* be taken from the neighbourhood of the house, and the committee-men *must*, many of them, come from a great distance. Suppose the allowance were to be sixpence a-mile (the distance to be ascertained by the oath of the traveller), and a sum not exceeding ten shillings a-day, so long as the committee continues sitting?

The directions respecting the choice of the spot are well imagined, and strongly mark the judgment and attention of the author. His ideas on this matter seem to quadrate pretty exactly with "the singular and well-directed researches" (as he styles them) of Mr. Howard, to whose merits, as a zealous and intelligent friend of human kind, it is difficult for language to do justice.

One direction is, that a preference be given to a spot surrounded with water, if it be in other respects healthy and proper. Unless the water be *running* water, it is not very likely to be healthy.

Section XII. appoints a nominal proprietor, to whom the ground, when purchased, is to be conveyed. This person is to be the town-clerk, for London; the clerk of the peace, for Middlesex; the clerk of assize of the circuit, for the other English districts; with a blank left for the Welsh; and for this purpose the officers in question are respectively constituted bodies corporate.

Observations.—After such a provision, might it not be necessary, or would it be superfluous, to provide that any action might be brought by the committee in the name of any of the officers therein named, without naming the person who holds the office? This is a precaution taken in some acts. The occasion, if any, which may make it necessary, is that of a vacancy happening in any of those offices, at a time when it is requisite to bring (suppose) an action of trespass, for any encroachment or other trespass committed upon the spot thus to be made the property of the public. The trespass is committed (suppose) at a juncture that does but just admit of an action's being brought in such time as to be tried at the next assizes. The county is one of those in which the assizes are held but once a-year. To obviate this difficulty, if there be one, why might not the committee be empowered to bring any such action in their own name? in short, why might not the committee themselves be the body corporate? This would save circuity; since whatever is done by the officer above mentioned, must be by their direction, and under their controul.

Section XIII. gives a proportion for determining the size of the several houses. They are to be large enough to contain *three* times the average number of convicts in a year, it being supposed that each convict will continue in them three years upon an average.

It likewise gives some directions with respect to the apartments. Each house, with its appurtenances, is to contain,

1. Lodging-rooms for the convicts.
2. Storehouses and warehouses.
3. An infirmary, with a yard adjoining.
4. Several cells or dungeons.

* See Sect. XVII. & XX.
† See Sect. XXII.

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5. A chapel.
6. A burying-ground.
7. Apartments for the officers.

Observations.—To the above accommodations, it might, perhaps, be not amiss to add a *garden*, to supply the house with vegetables. The laborious part of the work might be done by the prisoners themselves, who might be employed in it, either some few of them for a constancy, or all of them occasionally. In the latter case, the privilege of being thus employed might constitute an indulgence to be given in the way of reward, as it would be an agreeable relief from their ordinary domestic labour.* It seems probable, that a part of the labour might be more economically employed in this way, than upon the ordinary business of the house; even though the prime cost of a wall to inclose the garden were taken into the account.

With regard to the "cells or dungeons," as they are called, there are some cautions that seem highly necessary to be observed. That, for the punishment of the refractory, there should, in every such house, be some places of confinement, under the *name* of dungeons, seems perfectly expedient: at the same time that it is altogether inexpedient there should anywhere be any place that should partake in all respects of the *nature* of those pestiferous abodes.

The purposes for which dungeons seem in general to have been calculated (I mean such purposes as are justifiable,) are two: *safe custody*, and *terror*. The first must, in all cases, and the second may, in many cases, be desirable. But in aiming at these two purposes, another highly mischievous effect has unintentionally been produced; the exclusion of fresh air, and, as one consequence of it, the exposure of the room to perpetual damps. These apartments have been contrived under ground; hence there have been no lateral outlets, but the entrance has been at top through a trap-door. By this means the air has remained almost continually unchanged; being breathed over and over again, it has soon become highly unfit for respiration, and having in a short time dissolved as much of the damp as it could take up, the remainder has continued floating without any thing to carry it off. The pernicious consequences of such a stagnation, in generating the most fatal and pestilential diseases, have been inferred from theory,† and have been but too fully verified by experience and observation.‡

The business is, then, to make the necessary provisions for the purposes of safe custody and terror, without excluding the fresh air. To effect the first of these purposes, other means in abundance are afforded upon the face of the bill, as it stands at present (and if these be not sufficient, more might be afforded) by the structure and regimen of the prison. Some expedients relative to this design will be suggested in the course of these observations.

With regard to *terror*, the chief circumstance by which a dungeon is calculated to answer this purpose, is the exclusion of daylight. In a dungeon, this effect is produced by a constant and unalterable cause — the subterraneous situation of the place: but the same effect may be produced more commodiously, by means which might be applied or not, according as they are wanted, and that without excluding the fresh air. The means I am speaking of are very simple: Air travels in all directions; light only in right lines. The light, therefore, may be excluded without the air, by adapting to the window a black scuttle inflected to a right angle. If the door be made on the side opposite to the window, there will be as much draught as if the window opened directly into the air without the scuttle. Light might also be prevented from coming in at the door, by a return made to it in the same manner. By these means the prisoner's ordinary apartment, or any other apartment, may be made as gloomy as can be desired without being unhealthful.

I do not deny but that the terrors of a dungeon may depend in some degree upon the circumstance of its being under ground. In the imaginations of the bulk of men, the circumstance of *descent* towards the centre of the earth is strongly connected with the idea of the scene of punishment in a future life. They depend, in some measure, likewise, upon the circumstance of *stillness;* and the stillness may, at the same distance from a sounding body, be made more perfect in a dungeon than in an ordinary room: the uninterrupted continuity of the walls, at the same time that it excludes fresh air and daylight, serving also to exclude sound. But I cannot look upon the first of these circumstances of terror as being of that importance, as to warrant the paying so dearly for it as must be paid by the exclusion of wholesome air, which is so apt to change a punishment, meant to be slight and temporary, into a capital one. As to the purpose of stillness, it might be answered in a nearly equal degree, by building cells (which, at any rate, should be *called* dungeons) at a distance from the house. If the utmost degree of stillness were thought not to be absolutely necessary to be insisted on, a man's own lodging-room might at any time, by the contrivance above mentioned, be fitted up for the purpose. On

* Mr. Campbell, superintendent of the Thames convicts, employs a part of the ground he has the management of, in raising vegetables for their use.

† See, with respect to the effects of air tainted with respiration, Priestly on Air, vols. 1 & 2. With respect to damps, Fordyce's Elements of the Practice of Physic, title *Catarrh*, and Hamilton's Essays.

‡ See Howard on Prisons, *passim*.

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another account, however, the lodging-rooms are not quite so answerable to the design, as a place on purpose, since something of the effect depends upon the *strangeness* of the place; and upon its being known to be appropriated to a penal purpose.

After all, it does not seem advisable to rest the whole of the punishment altogether upon the ground of terror, since terror is obliterated by familiarity. To make up a uniform complement of punishment, it is found necessary to have recourse to other circumstances of distress; such as the hard diet appointed by this bill. This consideration makes it the less necessary to be at any inconvenient expense in screwing the sentiment of terror up to the highest pitch.

Section XIV. directs, that as soon as a spot of ground shall have been purchased, advertisements shall be inserted by the committees in the local newspapers, for builders to give in plans, with proposals and estimates: that a plan, when agreed upon by the committee, shall be presented to the judges as before;* and that, after their approbation, signified in writing, the committee may contract with the architect, and superintend the execution.

Sections XV. XVI. XVII. XVIII. and XIX. are taken up with a set of regulations, which, though very necessary, are collateral to the main purposes of the act, being employed in giving the usual system of powers requisite to effectuate purchases to be made for public purposes. With regard to these, it will be sufficient to give a very general sketch of the contents.

Section XV. removes the disabilities that proprietors of certain descriptions lie under to alien.

Section XVI. provides for the distribution of the purchase-money among the parties interested.

Section XVII. prescribes the usual course for bringing unwilling proprietors to compliance.

Section XVIII. gives the usual powers for settling disputes concerning the value of the spot, by the verdict of a jury.

Observations.—In settling the fine to be imposed on witnesses in case of contumacy, it limits it, on the side of diminution, to twenty shillings, and on the side of increase to ten pounds. This provision seems liable to an inconvenience to which fines imposed by statute are very apt to be liable, that of the *punishment's* proving, in many instances, *less than equivalent to the profit of the offence.* A witness, we shall say, knows of a circumstance, not notorious in its nature, that tends to diminish the value of the land: or, let the circumstance be notorious, one witness alone is summoned, his design of failing not being suspected. The value in question being the value of the fee-simple, it will be somewhat extraordinary, if the difference made by such a circumstance be not more than ten pounds. In such case, the owner, indemnifying the witness, is *sure* of gaining more than ten pounds, with only a *chance* of losing a sum between ten pounds and twenty shillings. A case might be figured, though not so natural an one, in which either the witness or one of the parties might have an inducement to suppress a circumstance that tended to *increase* the value of the lands.

On the other side, the danger is greater but the inconvenience less. The public does not suffer so much by a charge affecting the public purse, as an individual by a loss affecting his purse to the same amount.

Would there be any improper hardship in obliging the party in this case (as he is in so many more cases of greater inconvenience to him) to be examined upon oath?

If proper evidence cannot be got at one time, it ought to be got at another. The trial, therefore, should be adjourned; or rather, to prevent private applications to the jurymen, a new trial should be appointed. Power should be given in such case to compel the appearance of the contumacious witness by arrest; and if at last he appears and is examined, the natural punishment for his offence would be the being subjected to the costs of the preceding trial; since, if any part of the charge were not borne by him by whose delinquency it was occasioned, it must fall upon somebody who was innocent. This punishment, however, ought to be open to mitigation in consideration of his circumstances; since a charge to this amount, though it might be a trifle to one man, might be ruin to another.

In order, however, to ground a warrant for the apprehension of a witness who, on a former trial, had made default, an averment upon oath should be exacted from the party on whose behalf the warrant is applied for, that in his belief the person whose testimony is required is a material witness.

In justice to the author, it may be proper, in this place, to observe, that the deficiencies, if such they should be thought, which the above proposals are calculated to supply, are not chargeable upon this bill any more than they are upon all the acts in the statute-book that have correspondent passages.

Section XIX. provides, as is usual, that the costs of such a trial shall await the verdict.

Section XX. makes a saving for dwelling-houses and pleasure-grounds.†

* See Sect. XI.

† It would save paper were the six last sections generalized by an act on purpose. The same thing may be observed respecting a string of provisions at the end of the bill.

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So much concerning the ground-plot and the buildings. Next come the provisions relative to the *regimen* of the labour-houses: these occupy the thirty-two following sections, all but six, from the thirtieth to the thirty-fifth inclusive, which concern the disposal of convicts, previous to the commencement of their punishment.

Section XXI. provides, that when the houses are ready, or nearly so, the committees shall appoint officers, lay in stock, and establish regulations in the cases not provided for by the bill: with power at any time to make additions and alterations: every regulation to be approved of by the judges afore mentioned.

Section XXII. enumerates the different classes of officers to be appointed for each labour-house: empowers the committees to make removals and supply vacancies, and to exact security for the due execution of the respective offices.

These officers are to be,

1. Two visitors.
2. One governor.
3. One chaplain.
4. One surgeon or apothecary.
5. One storekeeper.
6. One task-master.
7. One gaoler.
8. "Such under-keepers, and other officers as the committee shall judge necessary."

Section XXIII. respects the salary of the governors: it directs that this salary shall be so ordered by the committee as to "bear a constant proportion to the quantity of labour performed in each house;" and arise chiefly, or, if possible, totally from that source: and this to the end that "it may become the *interest* as well as the *duty* of each governor to see that all persons under his custody be regularly and profitably employed."

Observations. — The principle here laid down as the ground of the above provision is an excellent lesson to legislators, and is of more use in that view, than, from its seeming obviousness when announced, it might at first appear to be. It is owing to the neglect of it, that we hear such frequent complaints of the inexecution of the laws — a misfortune ordinarily charged to the account of individuals, but which ought in fact to be charged upon the laws themselves. The direction here given is a happy application of that principle. It is by strokes like these that genius and penetration distinguish themselves from shallowness and empiricism. The means that are employed to connect the obvious interest of him whose conduct is in question, with his duty, are what every law has to depend on for its execution. A legislator, who knows his business, never thinks it finished while any feasible expedient remains untried, that can contribute to strengthen this connexion. The Utopian speculator unwarrantably presumes, that a man's conduct (on which side soever his interest lie) *will* quadrate with his duty, or vainly regrets that it will *not* so.

The object in view in it, we see, is partly *economical* and partly *moral*: that such a profit be drawn from the labour of the convicts as may altogether, or at least in part, compensate the expense of the establishment; and that the morals of the convicts may be improved by a habit of steady and well-directed industry. The means by which it aims at the attainment of this object, are the giving to the person who has the government of the convicts, an interest in causing the labour to be thus applied. This, as far as it goes, is excellent, but perhaps there are means by which the power applied to produce labour might receive a still further increase. This power can operate no farther than as it comes home to the persons whose labour is in question. These persons are the convicts. Giving the governor an emolument in proportion to the labour they exert, it is expected, will cause them to exert more labour than they would otherwise: why? because the governor will employ such means as *he* has in his hands to induce them to exert it. These means must be either *punishment* or *reward*, these being the only certain inducements by which one man can influence the conduct of another. Of these two inducements, punishment is the most obvious, and at first view, the least costly to him who is to apply them. Taken singly, however, it is not always the most efficacious, nor in the end the most economical. The quantity of work done will depend upon the ability of the workmen; the quantity of work which a task-master can exact by dint of punishment, will depend upon the *apparent* ability of the workmen. Now, if the *apparent* ability of the workmen were always equal to the *real*, punishment alone might be sufficient to extract from him all the labour he can exert. But this is not the case: a man can always suppress, without possibility of detection, a great part of the ability he *actually* possesses, and stifle in embryo all the further stock of ability he *might* have possessed in future. To extract, therefore, all the labour that can be got from him, it is necessary to apply reward in aid of punishment; and not only to punish him for falling short of the *apparent* measure of his ability, but to reward him for exceeding it. Thus it is, that the course which recommends itself to *sentiment*, as the most humane, approves itself to *reason* as the most useful.

It seems, therefore, as if it might be an useful supplement to the above provision, if the convicts themselves were to be allowed some profit, in proportion to the produce of

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their own labour. This profit should be the gross profit, because that depends upon themselves; not the clear profit, because that depends upon the economy of the governor. Such a provision would have a double good effect — on the welfare of the public at large, in making their labour more productive, and on their own happiness, by making them take a pleasure in their business.

It is to be observed, however, that this regulation can have effect only in the case where the produce of the labour of one man can be distinguished from that of the labour of another. From a passage in section 27th, it looks as if the notion of the author were, that it could be done in all kinds of manufactures. But this, I fear, is hardly the case. If not, would it or would it not be worth while to restrict the employment of the convicts to such manufactures in which it *could* be done? Where it cannot, the profit that each man can reap from his own labour will be lessened in proportion as the number of his comrades is increased. To illustrate this,

	By the Day.	By the Week.
Let the value of the gross produce of each man's labour be, upon an average, . .	6*d.*	3*s.*
Let the profit allowed him be one-sixth, ...	1*d.*	6*d.*
If he has five comrades, whose work is blended indistinguishably with his own, so that there are six persons in all to share the profit of his labour, his share will be but one-sixth of that one-sixth, that is, ...	⅙ of 1*d.*	1*d.*

He shares, it is true, in the profit upon their labour; but over this he has not that command that he has over his own. He knows, therefore, that he cannot depend upon it: if he could depend upon it, it would not be worth his while to exert his own.

A question that occurs here is, in what manner shall the workmen be let in to participate of the profits? Shall he be enjoined a certain task without profit, and then be allowed the whole profit upon the overplus? or, shall he be enjoined a less task, and then be allowed a share only in the profit upon the overplus? or, shall he be allowed a share, but of course a less share, upon every part of the produce of his labour, be it less or more? All these three expedients appear to be practised in different foreign work-houses: the first (or possibly the second) in the great house of correction at Ghent;* the second, in the house of correction at Delft in Holland;† the third, in the first great house of correction in Hamburgh.‡ The first, however, is liable to this objection: if the task be such, as any man of the least degree of adroitness can perform, it must, to some of the most adroit, be a very slight one: to such persons the reward will be a very lavish one; more, certainly, than is necessary, perhaps more than is expedient. If it be such as requires more natural adroitness than falls to the share of every body, some will be altogether excluded from the reward. The second expedient, too, will, in a greater or less degree, be liable to the one or the other of these objections. The third is free from both: this, therefore, seems to be the preferable one of the three.

As to the making the emoluments of the governor bear a constant proportion to the quantity of labour, the best way seems to be, to give him so much *per cent.* upon the produce of it, at the same time insuring it not to fall short of such or such a sum; suppose one hundred pounds a-year. The sum it is thus insured at must, on the one hand, be *as much* as is requisite to induce a competent person to undertake the charge: on the other hand, it must not be so much as appears likely to come near the probable profit that might be made from the percentage upon the produce of the labour. If this profit were to be less than the salary allowed in lieu of it, or indeed, if it were but little more, it would not make it worth his while to bestow the trouble it might take him to improve that fund to the best advantage.

Section XXIV. gives power to the committees to "increase, diminish, discontinue, or vary the number of officers," with the approbation of the judges as before; "except by taking away or discontinuing the offices of

"1. Visitor.
"2. Governor.
"3. Chaplain.
"4. Surgeon or Apothecary."

Observations.—Possibly the meaning might have been more clearly expressed by giving the power to suppress any of the officers mentioned in section 22d, (except as herein is excepted) or create any new ones, or alter the number of officers in each office. Thus ample, at least, I take the powers to have been, that were meant to be conferred.

Section XXV. establishes the economical powers of the governor.

1. It constitutes him a body corporate.

2. It empowers him to contract for the articles wanted in the house: to wit,

1. For clothing, diet, and other necessaries, for the use of the convicts.

2. For implements and materials of any manufacture they may be employed in.

3. It empowers him to carry on such manufacture, and to sell the produce.

4. It empowers him to draw on the treasurers of the several counties included within

* See Howard, 143. † Ib. 132. ‡ Ib. 116.

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the district, for the amount of the above expenses.

5. Also for the other expenses of the house, under the following heads, viz.

1. Salaries.
2. Wages.
3. Coroner's fees.
4. Funeral charges.
5. Repairs.
6. Other necessaries in general.

6. It empowers him to draw for the first quarter in advance: such draught being allowed by the committee, and countersigned by their clerk.

7. Lastly. Whatever monies he receives as above, it enjoins him to apply to the purposes for which they are issued.

Observations. — It could hardly have escaped the notice of the author, to what a degree the power of making these contracts lies open to abuse; and yet, upon the face of the clause now before us, this power is committed solely to the governor, without any express reference to the committee for their concurrence. The danger, however, is not altogether unprovided against. They have a general power of displacing him; and the dependence seems to have been upon their availing themselves of that power to exercise an occasional negative upon these contracts, or to make such general regulations as they should deem requisite to obviate the abuse.

Section XXVI. proportions the sum to be drawn for upon each county, &c. within the district, to the average number of the convicts, as declared in section 8.* Disputes concerning the proportions, it refers to the judges, as before,† whose determination it makes final.

Section XXVII. prescribes the accounts that are to be kept by the governor, storekeeper, and task-master.

1. The governor is directed to enter into a book "all accounts touching the maintenance of the house, and the convicts therein."

2. The governor and storekeeper are each to keep separate accounts of all the stock brought into the house.

3. The storekeeper is to deliver out the stock to the task-master, and take receipts from him.

4. The task-master is to deliver out the work to the convicts.

5. The task-master is to keep accounts of the quantities daily worked by them respectively.

6. He is to return the materials, when wrought, to the storekeeper, taking his receipt for them.

7. He is to dispose of the wrought materials, with the privity of the governor, to whom he is to pay the produce; for which the governor is declared to be accountable to the committee.

8. The governor and storekeeper are to keep separate accounts of the materials wrought and disposed of, under the following heads: —

1. Species and quantity of the materials in question.
2. For what sold.
3. When sold.
4. To whom sold.

Section XXVIII. directs the manner in which the above accounts shall be audited by the committee: —

1. They are to examine the entries, to compare them with the vouchers, to verify them by the oaths of the governor and storekeeper, and upon that to allow or disallow them.

2. An account, if allowed, is to be signed by two or more members of the committee.

3. If the balance should be in favour of the governor, they are to pay him by draughts in the manner above set forth:‡ if against him, they may either leave it in his hands, or order it to be paid over as they think proper.

Section XXIX. empowers the committee, in case of their suspecting fraud, to examine upon oath any persons whatsoever respecting the above accounts; and in case of any false entry, or fraudulent omission, or other fraud, or any collusion of an officer or servant with any other officer or servant, or with any other person, to dismiss the officer or servant, and appoint another: or, if they think fit, to indict the offender at the next sessions of the peace for the place wherein the house is situated: and it limits the punishment to a fine not exceeding ten pounds, or imprisonment not exceeding six months, or both; saving the right of action to any party injured.

Observations. — With respect to the punishment of officers, this section, when compared with section 24, seems not altogether free from ambiguity. After empowering the committee to dismiss officers for misbehaving in any of the manners specified, it goes on and subjoins, in the disjunctive, another mode of punishment: they may be dismissed, it says, "*or*" indicted. It looks, from hence, as if it were not the intention of the author, that an offender of the description in question should be punished by dismission and indictment both; yet this he might be, notwithstanding, under the general power of dismission at pleasure, given by section 24; unless this section be understood *pro tanto* to repeal the other.

It may be said, by way of reconciling the two sections, that the sense is, that the offender may, if thought proper, be dismissed, or he may be indicted; but that if he has been dismissed, he is not to be indicted. But suppose him to have been *indicted first*,

* See Table, col. 5. † See Sect. 11, 21. ‡ See Sect. XXV.

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and perhaps convicted, may he, or may he not then afterwards be *dismissed?*

As to the *quantum* of punishment allowed to be inflicted upon indictment, this may, perhaps, be liable, though in a much inferior degree, to the objection against a correspondent provision stated in section 18.

With respect to the jurisdiction within which the indictment is to be preferred, may there not be some danger in confining it to the sessions of the peace for the very place within which the house is situated? Suppose the delinquent to be a governor, and the house to be situated in a small town, such as Warwick or Wells:* the house at Warwick is calculated for 118 convicts; that at Wells for 126. The contracts for the maintenance of the house are all to be made by the governor: might not this privilege give him a considerable degree of influence among the grand jurymen for such small places as those towns? There are no separate sessions, indeed, for Wells or Warwick; so that the grand jurymen at the sessions there, would come out of the body of the county: but it might very well happen, on any given occasion, that the grand juries for the respective counties might, the greater part of them, come out of those towns; and the towns of Lincoln, Norwich, Durham, York, Gloucester, Worcester, Exeter, and Chester, all of them places wherein the committees are to meet, and within which, therefore, labour-houses are likely enough to be situated, have all separate sessions of their own. The houses, indeed, are directed not to be "*within* any town, if any other convenient place can be found;" that is, not encompassed with buildings; but this may not everywhere hinder their being within the jurisdiction; nor is the direction peremptory; and they are recommended to be *near* a town, to wit, a town of trade. The danger, certainly, is not very great; but it may be obviated without difficulty. All that is necessary is, to empower the committee, if they think fit, to prefer the indictment in any adjoining county at large; or in London or Middlesex, if the district be in the home circuit.

Section XXX. declares for what offences, and for what terms, convicts may be committed to these houses. These are

For petty larceny, { any term not exceeding two years.

For offences punishable by transportation, { for 7 years, { any term not exceeding 5 years, nor less than 1 year, / for 14 years, { any term not exceeding 7 years.

* See Table, col. 3.

Offenders are to be sent to the houses as soon as the committee certifies to the *judges*, as before,† that the house is ready to receive them.

Section XXXI. empowers the several courts, in the meantime, until the labour-houses are made ready, to commit offenders to the *county bridewells*, enjoining the justices in sessions to fit up those places for the "temporary reception, safe custody, employment, and due regulation of the offenders" that are to be sent there: and it declares that for such time the places in question shall be deemed labour-houses, for all the purposes within the meaning of this act.

Section XXXII. is confined to *male* convicts. It empowers courts to commit offenders of the male sex to work upon the Thames, or upon any other river that may be fixed upon for that purpose by an order of council. These are to work under the direction of a superintendent: to be appointed, for the Thames, by the justices of Middlesex; for any other river, by the justices of such adjoining counties as shall be fixed upon by the privy council.

The terms for which they may be committed are } not to be less than { 1 year, } nor to exceed { 7 years.

The provisions of this section are in the preambular part of it declared to be designed "for the more severe and effectual punishment of *atrocious* and daring offenders."

Observations.—The confinement and labour upon the Thames is looked upon, it appears from this, as being severer than the confinement and labour is at present in the county bridewells, or is expected to be in the labour-houses in question. It is not expressly referred to the option of the courts, which of these two species of hard labour or confinement they will order a man to: but as, by separate clauses, they are empowered to order a convict of the description in question to each, and not peremptorily enjoined to order him to either; it follows of necessity, that it was meant they should have that option. The preambular words above quoted being too loose to operate in the way of *command*, can be intended only for *direction*.

With regard to the superintendent under whose management the Thames convicts are to be, it speaks of him as one who is *to be* appointed by the Middlesex justices. Now, the present act, under which the present superintendent *has* been appointed, is, by the last section of the bill, to be repealed. This being the case, it looks as if a fresh appoint-

† See Sections 11, 21, 26.

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ment of the same or some other person to be superintendent would be necessary, unless some slight alteration were made in the wording of this clause.

Section XXXIII. extends the provisions respecting convicts sentenced to transportation, to capital convicts pardoned on that condition: and it allows and enjoins any one judge, before whom the offender was tried, upon a written notification of his Majesty's mercy, given by a secretary of state, to allow the offender the benefit of a conditional pardon, as if it were under the great seal.

Section XXXIV. proscribes the method in which an offender is to be conveyed from the place of sentence to the place of punishment, together with the documents by which the right of conveying him thither, and keeping him there, is to be established.

Upon the making of any order for the commitment of an offender to hard-labour, a certificate is to be given by the clerk of the court to the sheriff or goaler who has him in custody.

In this certificate are to be specified,

1. The Christian name of the offender.
2. His surname.
3. His age.
4. His offence.
5. The court in which he was convicted.
6. The term for which he is ordered to hard-labour.

Immediately after the receiving such certificate, the gaoler is to cause the offender to be conveyed to the place of punishment, and to be delivered, together with the certificate, as the case is, to the governor or superintendent, or "such person or persons as such governor or superintendent shall appoint:" and the person who receives him is to give a receipt in writing, under his hand: which receipt is declared to be a sufficient discharge to the person who delivers him. This certificate, "the governor or superintendent, or other person or persons to whom such offender shall be so delivered," is required "carefully to preserve."

Observations.—With respect to the words, "such person or persons as such governor or superintendent shall appoint," I doubt some little difficulty may arise. Does the passage mean any person in general acting under the governor or superintendent? any person employed by them as a servant in the discharge of the duties of their office? or does it mean, that some one particular person or persons should be appointed by them for this particular purpose; so that a delivery made to any other person in their service should not be good? On the one hand, it is not every person who may be occasionally employed in the service, whom it would be safe to trust with such a charge: on the other hand, it might be attended with a good deal of inconvenience, if upon any occasion the governor or superintendent, and any one person respectively appointed by them for this purpose, should by any accident be both absent, or disabled by illness. A remedy for both inconveniences may be the directing the governor to give standing authorities for this purpose in writing, to such a number of his servants, as may obviate any danger there might be of their being all out of the way at the same time. In such case, there could be no inconvenience in making it necessary to the discharge of him who is to deliver the prisoner, that he who is to receive him shall have produced and shown him such authority.

Section XXXV. provides for the fees and expenses of conveyance. The clerk of the court, on granting the certificate, and the sheriff or gaoler, on delivering the offender, are to have the same fees as would respectively have been due to them, had he been "sentenced to" transportation.

The expense of those fees, and the other expenses of conveyance, are to be borne by the jurisdiction over which the court presides; and are to be paid by the clerk of the court, upon an order made by the general sessions of the peace for the jurisdiction.

Section XXXVI. appoints, in general terms, the powers a governor or superintendent, or persons acting under them, are to have, and the punishments they are to be be liable to in case of misbehaviour: those powers and these punishments it declares to be the same as are incident to the office of a sheriff or gaoler.

Section XXXVII. gives directions respecting the species of work in which the convicts are to be employed. For this purpose it marks out two classes of employments, correspondent to so many different degrees of bodily strength. Those whose strength is in the first degree, whether of the one sex or the other, it destines to labour of the "hardest and most servile kind:" those whose strength is in a lower degree, to "less laborious employments:" and in determining whether an offender shall be deemed to come under one of these classes or another, it directs that the three circumstances of *health*, *age*, and *sex*, be all taken into consideration.

Of each of these classes of employment it gives examples. Of the hardest and most servile kind it proposes,

1. Treading in a wheel.
2. Drawing in a capstern for turning a mill, or other machine or engine.
3. Beating hemp.
4. Rasping logwood.
5. Chopping rags.
6. Sawing timber.
7. Working at forges.
8. Smelting.

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Of the less laborious class, it instances:—

1. Making ropes.
2. Weaving sacks.
3. Spinning yarn.
4. Knitting nets.

Of these and other such employments, it leaves it to the committees to choose such as they shall deem most conducive to the profit, and consistent with the convenience, of the district.

Section XXXVIII. regulates the lodgment of the offenders.

1. The males are at all times to be kept "separate from the females; without the least communication on any pretence whatsoever."

2. Each offender is in all cases to have a separate room to sleep in.

3. Each offender, as far as the nature of his employment will admit, is to work apart from every other.

4. Where the nature of the employment requires two persons to work together, the room they work in is directed to be of "suitable dimensions."

5. Such two persons shall not continue together but during the hours of work.

6. Nor shall the same two persons work together for more than three days successively.

7. If the nature of the work requires "many" to be employed together, "a common work-room or shed" may be allotted them.

8. But in this case the governor, or somebody under him, "shall be constantly present to attend to their behaviour."

9. If the work require instruction, instructors shall be provided, who shall be paid by the committee.

It likewise gives some directions concerning the dimensions and structure of the lodging-rooms.

1. They are not to *exceed* in { length twelve feet. / breadth eight ditto. / height eleven ditto. }

2. They are to have no window within six feet of the floor.

Observations.—Nothing can be better contrived than this little string of regulations. They appear to be such as cannot but be conducive in the highest degree to the two great purposes of safe custody and reformation. They involve, it is true, a very considerable degree of expense; but perhaps there is no case in which there is more to be said in behalf of a liberal supply.

With regard, indeed, to the first of the above restraints, this, it must be confessed, is of itself, in some cases, a pretty severe, and, upon the whole, rather an unequal punishment. The amorous appetite is in some persons, particularly in the male sex, so strong as to be apt, if not gratified, to produce a serious bad effect upon the health; in others it is kept under without difficulty. On the score of punishment, therefore, this hardship, could it be avoided, would, on account of its inequality, be ineligible. Under a religion which, like the Mahometan or Gentoo, makes no account of the virtue of continence, means perhaps might be found, not inconsistent with the peace of the society, by which these hardships might be removed. But the Christian religion, at least according to the notions entertained of it in Protestant countries, requires the temporal governor to put an absolute negative upon any expedients of this sort. Since, then, the gratification of this desire is unavoidably forbidden, the best thing that can be done is to seclude the parties as much as possible from the view of every object that can have a tendency to foment it. On this account, the first of these regulations is as strongly recommended by humanity as a means of preserving the quiet of each individual convict, as it is by policy as a means of preserving the peace of the whole community of them at large. Happily, the dispositions of nature in this behalf second, in a considerable degree, the dispositions of the legislator. Hard labour, when not compensated by nourishing and copious diet, has a strong tendency to diminish the force of these desires, whether by diverting the attention, or by diminishing the irritability of the nervous system, or by weakening the habit of body: and the desire, when the habit of gratifying it is broken off, subsides, and becomes no longer troublesome.

With regard to the size of the rooms, this we see has limits set to it on the side of augmentation; on the side of diminution, it has none. This partial limitation, I must confess, I do not very well perceive the reason of. Errors, if at all, seem more to be apprehended on the side of diminution than on that of augmentation. That the rooms should not be less than of a certain size, is conducive to health. The danger seems to be, lest the committees should, out of economy, be disposed to put up with narrower dimensions. If the sums provided by the bill out of the national fund are not sufficient, the deficiency, we may remember, is to be provided for by the counties.

Section XXXIX. prescribes the *times* of work.

1. The days of work are, unless in case of ill health, to be all days in the year: except

1. All Sundays.
2. Christmas-day.
3. Good-Friday.

2. The hours of work, as many as daylight and the season of the year will permit, including two intervals; *to wit*,

1. For breakfast . . . . Half an hour.
2. For dinner . . . . . One hour.

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3. At the close of the day, when working-time is over, such of the materials and implements as admit of removal, are to be removed from the work-rooms to places proper for their safe custody, there to be kept till it come round again.

Observations. — With respect to the hours of work, the duration of daylight, if taken for the sole measure, (as one would suppose it to be by this passage in the bill) would, I doubt, be found rather an inconvenient one. In the depth of winter, the time of working can scarcely begin so early as eight in the morning, nor continue so late as four in the afternoon. In the height of summer, it may begin earlier than three in the morning, and it may continue later than nine in the evening; but if from eight till four, that is, eight hours, be enough, from three to nine, that is, sixteen hours, were even nothing more than the *duration* of the labour to be considered, is surely too much. But labour of the same duration and intensity is severer in summer than in winter, heat rendering a man the less able to endure it. The better way, therefore, seems to be, if not to make the time of working longer in winter than in summer, at least to make it of an equal length. As eight hours, or the least time of daylight, therefore, is evidently too short a time, this will make it necessary to have recourse to lamps or candles. As the walls and floors will of course be of brick or stone, without any combustible linings, these artificial lights can scarcely be attended with any danger.

Whatever be the hours of labour fixed upon as most proper for an average, there are some among the employments above mentioned,* that will probably be found too laborious for a man to be confined to during the whole time. In such a case, either he must remain without any thing to do, or employed in some kind of work so much less laborious as to serve as a kind of relaxation from the other. The latter course seems beyond comparison the best. On this account, it seems as if it would be of advantage that no person should be confined exclusively to the most laborious of the classes of employments above specified; but that such offenders as were destined principally to an employment of that class should, for some part of the day, be turned over to one of the sedentary kind. On the other hand, neither would it be so well, perhaps, that offenders of the least robust class should be confined wholly to employments purely sedentary. The relief of the former and the health of the latter would, it should seem, be best provided for by a mixture of the laborious and the sedentary. By this means, the time of the convicts might, it should seem, be better filled up, and the total quantity of their labour rendered more productive

The great difficulty is, how to fill up their time on Sundays: for, with regard to men in general, more particularly to persons of this stamp, the danger always is, that if their time be not filled up, and their attention engaged, either by work or by innocent amusement, they will betake themselves either to mischief or to despondency. Divine service, it is true, is appointed to be performed, and that twice-a-day; but that, according to the ordinary duration of it, will not fill up above four hours; that is, about a quarter of the day.

To fill up the remainder, four expedients present themselves: — 1. One is to protract the time of rest for that day, which may be done either by letting them lie longer, or sending them to bed earlier.

Another is, to protract the time of meals.

A third is, to protract the time of divine service.

A fourth is, to furnish them with some other kind of employment.

The two first are commonly enough practised by the working class of people at large who are at liberty; but when put both together, they will not go any great way.

The time of attendance at church might be lengthened in two ways: 1. By adding to the ordinary service a standing discourse or discourses, particularly adapted to the circumstances of the congregation. This might consist, 1*st*, of prayers; 2*dly*, of thanksgivings, neither of which, however, could with propriety be very long; and 3*dly*, of a discourse composed of moral instructions and exhortations. The instructions and exhortations would naturally have two objects: the conduct of the hearers, 1*st*, during the continuance of their punishment: 2*dly*, after their restoration to society

2. Another way of adding to the church service is by *music*. This will, at any rate, be a very agreeable employment to many, and, if properly managed, may be a very useful one to all; even to those who have no natural relish for music in itself. The influence which church music has over the generality of men, in bringing them to a composed and serious turn of mind, is well known. The music might be either vocal only, or assisted by an organ. In either case, the vocal part might, with a little instruction, be performed by the congregation themselves, as it is at the Magdalen, and other public foundations.

3. As to other employments, walking (in as far as their limits will permit them) might go some way towards filling up their time. This would be an additional use for the garden proposed in the observations to section 13. On this occasion, to prevent insurrections and cabals, the convicts might be connected two and two together; a slight,

* See Sect. XXXVII.

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chain, not heavy enough to incommode them by its weight, might answer the purpose. Each offender would by this means be a clog and a spy upon his companion. In this view, the idea adopted in section 38, with regard to the manner of working, might be pursued, so as that the same two persons should not be coupled together two successive days; nor should it be known before-hand, what two persons are to be together. To prevent this, the names should be drawn out every day by lot. By this means, supposing an offender had succeeded so far in a project of escape or mischief, as to engage some one of his comrades to join with him, he could not, for a long time afterwards, unless by a very extraordinary turn of chance, resume the conversation without the privity of two others, whose dispositions could not be known before-hand. If the expedient of a garden were to be employed, such an arrangement would have a farther good effect, in rendering it more difficult for them to wander out of bounds, and do mischief to the cultivated part of it.

The interruptions of bad weather, and the shortness of the day, at any other time than the height of summer, would still leave a considerable part of their time which could not be filled up in this manner; either, therefore, they must be permitted to employ themselves in some other manner, or they must be compelled to absolute inaction. They cannot, as other persons of the working class do, employ themselves on those days in visiting their friends.

They may employ themselves, it is true, in reading the Bible or other books of piety: but there will be a great many who cannot read; and of those who can, many will have so little inclination, that on pretence of reading, they will do nothing.

It is to little purpose to issue directions, which, in the nature of them, furnish no evidence of their having been complied with. The not attending to this, is a common stumbling-block to superficial reformers. The evidence of a man's having complied with a direction to work, is the work he has done: this may be judged of at a glance. But what is the evidence of a man's having employed himself in reading? His giving a good account of what he has read. Unquestionably: but such an one as it would be to little purpose to think of exacting, for, though his attention has been diligent, his memory may be weak. Besides, who is to judge? who could find time enough to catechise such a multitude? It would require no small number of schoolmasters to turn such an establishment into a school.

Upon the whole, I can see no better expedient at present, than that of permitting them (not *obliging* them, but *permitting* them) to betake themselves to some easy sedentary employment, such as knitting, spinning, or weaving, that might afford them a small profit. This profit, if made their own, would make the employment pleasant to them. Devotion, it is true, is better on such a day than industry; but industry is better on every day than total idleness, that is, than despondency or mischief. The necessity in this case seems at least as strong as that which has induced the legislature to permit the practice of certain trades on the day in question, and which is universally understood to authorize persons of all descriptions to pursue most of their household occupations. It were hard if an institution, confessedly no original part of the religion we profess, but only adopted into it by early practice, and in later times sanctioned by human authority, must, at all events, be permitted to oppose the main ends of religion, innocence and peace.

I speak all along under correction, and what I propose is only upon the supposition that no other means can be found of filling up their time in a manner more suitable to the day.

With regard to the making the windows not less than six feet above the floor, this regulation is also recommended by Mr. Howard. His design in it, I cannot find he has anywhere mentioned; I suppose it to be to prevent the convicts from looking out. The prospects or moving scenes, whatever they might be, which the windows, if lower, might open to their view, might serve to distract their attention from their work. This privation may be considered in the light of an independent punishment, as well as in that of a means of insuring their subjection to the other.

Besides this, Mr. Howard is strenuous against glass windows: he would have nothing but open grating. In this case, the height of the windows would be a means, in some measure, of sheltering the inhabitants from the wind, though, on the other hand, it would expose them more to rain. I know not, however, that he has been anywhere explicit in giving his reasons for reprobating these conveniences.

One reason may be the insuring a continual supply of fresh air; but this does not seem conclusive. In apartments, indeed, so crowded and ill-contrived as many of those he had occasion to visit, the windows, being glazed, might, by accident, be attended with bad effects; for I think he complains, in many places, of the closeness of such rooms, owing, as it seems, either to the windows not being made to open, or to the inattention or ignorance of the gaoler or prisoners in not opening them. But under the excellent regulations provided for these houses, the apartments never will be crowded; they will not be crowded more than those of a private house;

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and in a private house it never surely was understood to be necessary, or even of use to health, that there should be nothing but grates for windows. If the convicts were to eat in a common room, the setting open the doors and windows for an hour and a-half, (which is the time allotted them for meals,) would be quite sufficient for the purpose of ventilation.

Another reason for having nothing but grating may be the contributing to give a gloomy and distressful appearance to the outside of the prison. This reason, as far as it applies, seems to be a very good one. But it applies only to the front of the house; for this is all that need, or indeed that ought, to be exposed to the eyes of passengers. The apartments thus exposed might be destined for those whose labour was the hardest, and whose treatment, upon the whole, was designed to be the severest; or the whole or a great part might be taken up with common working-rooms, not made use of for lodging-rooms.

Section XL. regulates the articles of diet and apparel. For food the convicts are to have

1. Bread, and any coarse meat, "or other inferior food."

2. For drink, water or small beer.

3. The apparel is to be coarse and uniform, with certain obvious marks or badges on it. The declared purposes of these marks are, 1*st*, to humiliate the wearer; 2*dly*, to prevent escapes.

4. The articles under the above heads are to be ordered in such a manner as the "committee shall from time to time appoint."

5. No offender is to be permitted to have any other food, "drink, or clothing, than such as shall be so appointed."

Persons wilfully furnishing him with any articles of the above kind, other than what shall have been so appointed, are to forfeit not more than £10, nor less than 40s.

Observations.—The expedient of marking the apparel is well imagined, and quadrates with the practice of several foreign countries.* It is designed, we see, to answer two purposes: 1*st*, that of a separate punishment, by holding up the wearer in an ignominious light; 2*dly*, that of safe custody, to ensure the continuance of the whole punishment together. The first of these purposes it may be made to answer as completely as any other that can be proposed: with respect to the latter, it will readily be acknowledged not to be perfectly efficacious.

Marks employed for this purpose, may be either *temporary* or *perpetual*. Against perpetual marks, in every case, then, except where the confinement is meant to be perpetual, there is this conclusive objection, that they protract a great part of the punishment beyond the time that was meant to be prescribed to it. Temporary marks may either be *extraneous* or *inherent*. The marks here proposed are evidently of the former kind. These, so long as they continue, are very efficacious means of detection, and may be made more palpable than any that are inherent. They serve very well, therefore, as obstacles to an escape during the first moments; in short, until such time as the fugitive can by force or favour procure fresh apparel. But if he is once housed among his friends or confederates, the use of them is at an end. If his person be not known, he may go about boldly like another man.

Inherent marks seem never hitherto to have been thought of. These may be produced by either *mechanical* means or *chemical*.

Instances of *mechanical* means are the partial shaving of the head, or of the beard, or the chin, or mouth; or the shaving of one eye-brow. But the mark made by the partial shaving of a part of the face, of which the whole is usually kept shaved, is as soon got rid of as any mark that is but extraneous: besides that, it is inapplicable to boys and women. The mark made by the shaving of one eye-brow seems to promise better; but it is not free from all objections. In the first place, it is not absolutely a sure one. Some persons have naturally so little hair on their eye-brows, that, if the whole of it were taken off from both, it might not be missed; and artificial eye-brows are said to have been made of mouse-skin, or in other ways, and that so natural, as not to be detected without previous suspicion. In the next place, there is some danger that a mark continually renewed, as this must be, by repeated shavings, would be in some degree perpetual. If the same eye-brow were to be constantly subjected to the operation, the hair might be so thickened as to appear different from the other eye-brow. If sometimes one eye-brow and sometimes the other were to be shaved, there must frequently be times when the growth of them will be alike, and the distinction no longer apparent. As far, then, as it goes, the best expedient seems to be the keeping them constantly both shaved.

Instances of *chemical* means of producing marks are washes applied to the forehead, or to one or both cheeks, or, in short, to the whole face, so as to discolour it. Chemistry furnishes many washes of this sort. Of several of these I have often undesignedly made trial upon myself. Various metallic solutions produce this effect in a state so diluted as prevents any objection on the score of expense.† The stain lasts without

* See Howard on Prisons.

† Solution of gold in *aqua regia*, produces a purplish colour; solution of silver in *aqua fortis*,

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any fresh application, as long as the *stratum* of skin which it pervades; that is, to the best of my recollection, about a week. No other washes have ever yet been found to discharge it.

Marks of this kind, we see, cannot be put off like those of the former; nor, if made as extensive as they may be, can they be concealed without such a covering as would be almost equally characteristic with the mark itself. When the term of punishment was so near being expired, that it could manifestly not be worth while to run the risk of an escape, they might be disused. For greater security, they might be so shaped, perhaps, as to express the surname of the offender, the first letter of his christian name, and the name of the place in which the labour-house he belonged to was situated.

One great advantage of these permanent marks with respect to the offender, is, that they would render the use of *chains* less necessary. The convicts upon the Thames, in consequence of repeated escapes, are made to work constantly in fetters.

By Section XLI. officers and servants belonging to the house are specially restrained from contravening the regulations established in the preceding section. Upon any such delinquency the offender is to be suspended by the governor forthwith: the governor is to report him to the visitors, and the visitors to the committee at their next meeting. The committee is to inquire upon oath, and, if found guilty, to punish him by

1. Forfeiture of his place;
2. Or fine, not more than ten pounds;
3. Or imprisonment, for not more than six months.
4. Or any number of such punishments in conjunction.

An exception is made with regard to any diet or liquors ordered, in case of illness, by the surgeon or apothecary.

Observations.—The fine in this and the preceding section is not liable to the objection made to the like provision in section 29. The profit of the offence can never, in any shape, come nearly equal to the greatest *quantum* of the fine. Let the offences in the two cases be compared, it will be seen how much greater the temptation is in the latter than in the former.

The regulations in this and the preceding section, about not punishing the convicts with any extra articles of consumption, might need to be a little altered, if what I have ventured to propose concerning the allowing them a part of their earnings* were to be adopted. These earnings must either be hoarded up for them, to be given them at their discharge, or allowed them to be spent. In the first case, the danger is, lest an advantage so distant should not, in their imprudent minds, have influence enough to operate as an inducement. "I may be dead before then," a man may say, "and what use will all the money be of to me? besides, if I am alive, how can I be sure that I shall get it? What need have I, then, to punish myself with working more than I am obliged to do?" I should not, therefore, expect any very general or considerable good effect from such an allowance, without the liberty of spending it, or at least a part of it, at present. The business, then, would be, to determine the articles in which they might be allowed to spend it. Even drink, so it be not any of those drinks that are known commonly by the name of spirituous liquors, need not be absolutely excluded: but, for very good reasons, which are strongly insisted on by Mr. Howard,† no profit upon the drink should be allowed to the governor, or any persons under him: or else (what would come nearly to the same thing) if there were a profit allowed upon that article, it should not be greater, nor indeed so great, as the profit to be allowed upon the other articles among which they were to be permitted to take their choice. The smallness of their fund would probably of itself be sufficient to limit their consumption within the bounds of sobriety. If not, the quantity of drink of each sort, which any one man should be allowed to purchase, might be expressly limited. The circumstances of their being so much apart from one another, and so much under the eye of their inspectors, would obviate the difficulty there would be otherwise in carrying such a limitation into effect.

Section XLII. makes provision for the equipment of the offender upon his discharge. Upon his commitment, the clothes he brings with him are to be cleaned, ticketed, and laid up. Upon his discharge, they are to be delivered back to him, together with such additional clothing as the visitors shall think proper. A sum of money is also to be allowed him for his immediate subsistence, to the amount of not more than five pounds, nor less than forty shillings. And if he has behaved himself well during his confinement, the visitors are to give him a certificate to that effect under their hands.

Observations.—There is something singularly characteristic in the foresight and humanity displayed in this provision. It is copied from the experimental act of 1776. After a long seclusion, the convict is once more turned adrift into society. His former con-

and solution of mercury in the same acid, a black. Solution of silver is the operative ingredient in several of the fluids that are advertised to dye the hair.

* See Observations to Sect. XXIII.

† P. 49.

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nexions are by this time, perhaps, dissolved; by death, by change of abode, or by estrangement: at any rate, he is probably at a distance from them. His known delinquency and his punishment, though, after such a course of discipline, it is to be hoped it will not operate upon *all* persons so as to prevent their employing him, may, however, operate upon *many*. Meantime, if he be totally unprovided, he must either sink at once into the idleness and misery of a poor-house, or beg, or starve, or betake himself to courses similar to those which brought him to the place of punishment he is just freed from. The expedient, therefore, of giving him a temporary supply, is an highly proper one, though not so obvious as, for the credit of human sagacity and compassion, it were to be wished it were.

But supposing an offender's behaviour to have been such as renders it improper for the visitors to give him the certificate here mentioned, what is to become of him then? Were no certificate to be given in any case, some persons might, perhaps, be induced to run the hazard of employing a convict, to whom it would not have been proper to have granted one. But when it is known that a certificate of good behaviour is granted to the generality of the convicts, the denial of such a certificate to any one amounts in fact to a certificate of the contrary. In such a case, it is not very probable that he will find employment anywhere. The supply provided for him, liberal as it is, can *reprieve* him only, not *save* him, from the above-mentioned dilemma.

In such a case, I see but two courses that can be taken. One is, to empower the committee to continue him in his confinement, till his behaviour shall have entitled him to his certificate: the other is, to enlist him by compulsion in the land or sea service. How far it would be consistent with the honour of either of those services to admit a man with such a stamp of uncancelled ignominy upon him, is more than I can take upon me to determine. At any rate, it seems hardly proper to let him rank upon a par with honest men. In the sea service, provisions being found him, his pay might very well bear to be reduced below the common level: in the land service, provisions not being allowed, the subsistence is too bare to admit of the least reduction.

It is to be hoped, indeed, that after so strict and well-regulated a course of discipline as that prescribed by the bill, there will be very few convicts to whom it will be necessary to deny the certificate in question; but it is fit that every case that can happen should be provided for.

Section XLIII. provides that the offenders shall be divided into three classes; in each of which every offender is to be ranked, during an equal part of his time: and as he advances from a prior to a subsequent one, his confinement and labour are to be gradually less and less severe. The different gradations of severity are to be settled from time to time by regulations to be made by the committee, so as not to clash with the provisions of this bill.

Observations.—This division of the convicts into classes will be examined, when we come to consider the uses that are made of it.

Section XLIV. regulates the furniture and police of the lodging-rooms.

1. Every lodging-room is to be "provided with matting for lying upon, a coverlid, and two or more coarse blankets."

2. "Also with proper tools or instruments for their employment."

3. No person (except as herein is excepted) is to "be permitted to go at any time into these rooms, or to see or converse with the offenders."

4. Persons excepted are, 1. The officers and servants of the house; 2. Any person who has an order from any member of the committee.

5. At night, as soon as the time of work is over, a bell is to be rung, the doors of the rooms locked, and the lights in them put out; and from that time, till the hour of work comes round again, a watchman is to patrole over every part of the house every half-hour at least.

Observations.—Under the article of bedding, I see no mention made of *sheets*. Was this omission undesigned, or was it meant that they should have none? or would not the use of linen, if not absolutely necessary, at least be conducive, however, to the preservation of their health? Mr. Hume, I think, in his History, Mr. Barrington,* and, I believe, medical writers, have mentioned the use of linen as being a principal cause why the leprosy, which was once so common in this country, is now so rare.

I see no mention neither of a *bedstead*. Mr. Howard in general terms recommends bedsteads for health and cleanliness.† A bedstead, however cold the materials (suppose iron,) will be warmer than the stone or brick floor, with only matting to cover it; for the surface of the iron in the bedstead being much less than that of the covered part of the floor, the natural warmth of the body, accumulated on the bedding, will be conducted away much less readily by the former than by the latter. At any rate, the elevation given by a bedstead will save the bedding from being trampled on, and covered

* Observations on the Statutes, Title *Consuetudines et Assisa Forestæ*, p. 193, 3d edit.

† P. 71, 264.

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with dust and dirt. It will also give access for the air to ventilate the under part of it.

Bedsteads are actually allowed to felons in many gaols.*

I see no provision made here for *firing:* yet some provision of this sort seems absolutely necessary, at least in extreme cold weather, for those whose employments are chiefly of the sedentary kind, and for all of them at times, when no work is done, as on Sundays. For this purpose, it is by no means necessary, nor even advisable, that there should be a fire to every room, nor between every two rooms, nor indeed that there should be in any of the rooms any fireplaces at all. The most economical way as yet in use, of generating and applying heat for this purpose, seems to be that which is practised in *hot-houses*, by means of flues or lateral chimnies, in which the smoke deposits its heat in its passage to the atmosphere. The fire employed in heating the bread-oven might, perhaps, be occasionally made useful in this way. I have heard it suggested, that the steam of boiling water might perhaps be applied to the purpose of heating rooms, in a method that might be more economical than that of heating them by smoke. If this expedient were employed, the coppers in which the victuals were boiled might perhaps be adapted to this purpose.†

The provision for excluding promiscuous visitants seems highly eligible. In a nation, however, so jealous of every thing that savours of secresy in the exercise of coercive power, even over the most obnoxious of its members, it required no mean degree of intrepidity to propose it. I had, in truth, but little hope of seeing it proposed, much less adopted and acquiesced in, as it already is in the instance of the Thames convicts. An acquiescence so complete and general as this has been found to be, argues a greater fund of solid sense, and less sensibility to inflammatory ideas, than perhaps, before the experiment was made, could reasonably have been hoped for. This, together with many other examples to the like effect, may serve to silence at least, if not to remove, any objections that may be entertained against a measure acknowledged to be beneficial in itself, on the score of its being obnoxious to popular sentiment, unwarranted by the dictates of utility.

The establishment of Visitors, who are frequently to be changed, and the admission of occasional visitants by order from any member of the committees, are expedients that seem amply sufficient for obviating any real danger of abusive severity. It is surely a notion too wild to be seriously entertained, by any one who will give himself leisure to reflect, that the whole body of country magistrates, and the whole circle of their acquaintance, are likely to be tainted with the principles of aristocratic tyranny. Supposing this, against all probability, to be the case, and that any one habit of undue severity were established, any one false brother would be sufficient to betray the secrets of the confederacy, and expose it to the resentment of the public.

At the same time, it is highly expedient to give as little admittance as possible to persons of such ranks in life as are most obnoxious to the punishment inflicted in these houses. The cirumstances of secresy and seclusion give an air of mystery to the scene, which contributes greatly to enhance the terrors it is intended to impress. True it is, that the convicts, as they come to be discharged, and to mix again with society, will circulate, among persons of the same ranks in life, such accounts of what they have seen and felt, as it may be thought will be sufficient to correct any inaccuracies in the notions that may have been suggested by imagination. This, however, I take it, will not be altogether the case. Experience and ocular observation might indeed, in time, dissipate the illusion, and bring down the apparent horrors of the scene to a level with the real suffering; but in the susceptible minds of the giddy multitude, it is not mere report alone that can obliterate the influence of first impressions.

Section XLV. makes provision for communicating to these societies the benefits of religion.

1. On all Sundays, as also on Christmas-day and Good-Friday, there is to be morning and evening service, with a sermon after each; at which services all the convicts (unless disabled by illness) are to be present.

2. The two sexes are to be kept at a distance from, and, by means of partitions, out of sight of, one another.

3. Of the officers and servants, such as can be spared from their employments, are likewise (unless prevented by illness) to be present.

4. The chaplain is required to visit, at their request, and empowered to visit at his own discretion, any of the offenders, sick or in health, who may stand in need of his spiritual assistance: so that his visits interfere not with their stated labours.

Observations.—It were to be wished on this occasion, if it could be done without inconvenience, that such of the convicts as may happen to be of a religion different from the established, might have the benefit of spiritual consolation in their own way. It is no answer, to say with a sneer, that the inhabitants of these houses are in little likelihood of being encumbered with religious scruples;

* Howard, 96, 264, 292, 404, 407, 443, 454.

† Mr. Howard found stoves, and a regular provision for firing, in several foreign prisons. See Howard, 109, 114, 137.

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for a total indifference to religion is by no means a necessary accompaniment to an occasional deviation from the dictates of morality; on the contrary, it is no uncommon thing to observe, in the same person, a great inattention to the essentials of morality, joined to an anxious attention to the inessentials and externals of religion. This point, however, could not be compassed without some difficulty. It would be endless to set up as many chapels as there may chance to be sects in this community. At any rate, it is not the belonging or professing to belong to any other sect, that should be allowed to excuse a man from attending the stated service; for, if this were the case, persons who cared nothing about religion would be apt to profess themselves of some dissenting sect, that, instead of going to chapel, they might spend the time in idleness. The being obliged to give such attendance would be no hardship to any, even in a religious view; for I do not believe there is at this time of day any sect which holds it sinful merely to be present at divine service performed according to the rites of the church of England.* I suppose there are few, indeed, but would even think it better to attend that service than none at all.

Jews and Catholics would be the worst off: Jews, with their continual domestic ceremonies, and Catholics with their numerous sacraments. Catholics† seem, at first sight, to be without hope of remedy: a door, however, though but a narrow one, is opened for their relief, by the general power vested in the members of the committees to give orders of admission. As to Jews, I must confess, I can see no feasible way of making, in each labour-house, the provisions requisite for satisfying all their various scruples. As it happens, there seems reason (I do not know whether to say to hope, but at any rate) to believe, that of such of them as are likely to become inhabitants of these houses, there are not many on whom these scruples would sit heavy. The only expedient I can think of for the indulgence of these people is, to have one labour-house for all the convicts of this persuasion throughout the kingdom. In such case, it would be but reasonable that the whole community of Jews should be at the expense of this establishment, including the charges of conveyance. They might then have their own *rabbis*, and their own cooks and butchers.

The provision for the concealment of the sexes from each other has been exemplified by the practice in the Magdalen and other chapels.

In some of the larger houses, considering the number of persons, either sick or in health, who might be disposed to receive the assistance of a minister, or to whom a zealous minister might be disposed to give it, especially if these additions were to be made to the service that are proposed under section 39, a single chaplain might hardly be sufficient to go through all the duty. In such case, the contributions that might be required of occasional visitors at chapel, who are likely to become numerous, might probably provide for another chaplain.

Section 58, which relates to convicts working upon rivers, provides for the burial of such as die under confinement. I see no such provision relative to such as may die in the labour-houses. Would it not be proper to annex to each house a piece of ground to be consecrated for that purpose?

Section XLVI. makes provision for the article of health.

1. There are to be two or more yards, in which the offenders are to be permitted to take the air by turns, as their health may require: in these yards, if proper employment can be found, they are also to be permitted to work, instead of working in the house.

2. Any offender appearing to be sick, is, upon report made by the surgeon or apothecary that his sickness is real, to be ordered by the governor to the infirmary, if his sickness be of a nature to require it, and entered in a book upon the sick list: and upon the surgeon or apothecary's report of his being recovered and fit to work, he is to be brought back to his lodging-room, and put to work again, as far as is consistent with his health.

Observations. — The number of yards is required, we see, to be two at least: the intention is manifest enough, though it is not mentioned: it is, that the two sexes may, in conformity to the plan of separation marked out in sections 38 and 41, have each a yard to themselves.

As to the purpose of airing, the best place of all is the top of the house. The air on the top of the house is likely to be purer than the air in any yards can be, surrounded as such yards must be by a high wall: 1*st*, such a situation would be higher than the damp or the noxious effluvia would ascend, were the air to remain unchanged: 2*dly*, besides this, the air, on account of the openness of the situation, would, in fact, be continually renewing.‡ For this purpose, it would be necessary the roof of the house should be flat, and covered with lead. The infirmary might be situated in the highest story, so that from thence to the leads would

* In the prisons at Paris, however, Protestants are excused from hearing mass. See Howard, 81.

† By Stat. 27 Eliz. c. 2, for a popish priest or other ecclesiastical person to be in any part of the realm is treason; and for any one wittingly and willingly to receive, relieve, or comfort him, is a capital felony.

‡ Howard, 82, 91.

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be but a few steps. It is doubtless for these or similar reasons, that a situation thus elevated is very generally chosen for the infirmary in foreign prisons.* In order that those whose health might require it, might enjoy the benefits of air and exercise in some degree, even in rainy weather, it would be of great use if the building, or a great part of it, were raised upon arcades. This Mr. Howard recommends strongly for so much of it as is occupied by lodging-rooms, on the score of security.

The expense, indeed, of building upon arches, and of leading, would be very considerable; but the plan seems to be, not to spare expense. The Conciergerie at Paris,† the Dol-huys at Amsterdam,‡ the Maison de Force at Ghent,‖ are raised upon arcades:§ in the Bastile at Paris, the roof is flat and leaded. I must confess, I see not why England should be less able to bear such an expense than France, Holland, or Austrian Flanders.

Section XLVII. regulates the appointment, powers, and salaries of the visitors.

1. Each committee is to appoint two visitors, "Justices of the Peace, or other substantial householders," who are to be resident in the district.

2. Of these visitors, one is to be changed every year: no one is to continue for more than two successive years; but any one, after an interval of two years, may be again appointed.

3. The visitors are to attend at least once in every fortnight.

4. At each attendance they are to go through the following heads of duty:

1. To examine the state of the "house" [buildings.]
2. To see every convict.
3. To inspect the accounts of the governor and storekeepers.
4. To hear any complaints concerning the behaviour of the officers and servants.
5. Or of the convicts.
6. And in general to examine into the conduct and management of the house.

5. For these purposes, every visitor is empowered to examine any persons upon oath.

6. They are likewise empowered to apply punishments or rewards as under-mentioned.

7. They are from time to time to make their reports to the judges,¶ as before, or to the committee of the district.

8. They are to have a gratuity, if they think proper to demand it, for each attendance, to be settled by the committee, and approved of by the judges.

Observations. — The rotation established among these officers is grounded upon approved principles, that are exemplified in many other instances. If the same two visitors were to be continued for life, the degree of discipline kept up in the house might come to depend more upon the notions and temper of those two persons, than upon settled rules. Having no emulation to animate them, they might grow torpid and indifferent: they might contract too close an intimacy with the governor and other officers, so as to be disposed to connive at their negligence or peculation: they might make what is called a *job* of their office, looking upon the emoluments of it as an establishment for life. On the other hand, were both visitors to go out at once, the fresh comers would for a time be new and awkward in their office; and the fund of experience collected at each period would be dissipated by every fresh appointment. But upon this plan, that fund is continually accumulating, and is transmitted entire through every succession. At the same time, by admitting the re-election of a visitor after a certain interval, room is left for accepting the services of such gentlemen as, in point of inclination and ability, may show themselves most competent to the office.

Section XLVIII. gives power to the visitors to suspend any officer or servant, except the governor, in case of "corruption, or other gross misbehaviour."

Section XLIX. appoints the duty of the task-master.

1. He is constantly to superintend the works carried on by the convicts.

2. He is to "take an account of every neglect of work or other misbehaviour."

3. Also of any instance of extraordinary diligence or good behaviour.

4. He is to make his reports from time to time to the governor, who is to cause them to be entered in a book to be kept for that purpose.

Section L. defines the powers of the governor in punishing offences committed in the house. These are enumerated under the following heads: —

1. Disobedience of the "orders of the house."
2. Idleness, negligence, or wilful mismanagement of work.
3. Assaults, not attended with any dangerous wound or bruise, by one convict upon another.
4. Indecent behaviour.
5. Profane cursing and swearing.
6. Absence from chapel.
7. Irreverent behaviour at chapel.

2. For any of the above offences, the governor may punish by close confinement in a "cell or dungeon," for any term not exceeding three days, and keeping the offender upon bread and water only.

* Howard, 82, 91, 96.
† Ibid. 82.
‡ Ibid. 128.
‖ Ibid. 140.
§ Ibid. 92.
¶ See Sections 11, 21, 24, 26, 30.

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3. Touching any of the above offences, the governor may examine "*any*" persons upon oath.

Section LI. empowers the visitors and the committee to punish certain other instances of bad behaviour in a severer manner.

1. To the visitors power is given to punish, in any convict, the following additional offences:—

1. Absolute refusal to perform his work.
2. Wilful abuse of the materials.
3. Attempts to escape.
4. Assaults on any person at large, who happens to be present.
5. Assaults on any officer or servant of the house.

2. They are empowered also to punish any assaults by one convict upon another, that may happen not to have been punished by the governor.

3. Also any of the offences which the governor is authorized to punish in the case where, by reason of the enormity or repetition of the offence, the punishment which the governor is empowered to inflict of his own authority, is thought by him not to be sufficient.

4. For any of the above offences, the visitors may punish by either

1. Moderate whipping.
2. Confinement upon bread and water in a dungeon, for any time not exceeding ten days.
3. Or both the above punishments in conjunction.

5. Concerning the above offences they are empowered to examine upon oath, with an injunction that it be in the presence of the offender.

6. In the cases No. 2 and 3, "*the governor may, and he is hereby required to, order such offender to the cells or dungeons,—and is immediately,*" *or at the next coming of the visitors, to* "*report such offence to such visitors; who are hereby empowered and required to inquire and determine concerning the same.*"

7. In case of any offence which the visitors shall deem worthy of a greater punishment than they are authorized to inflict, they shall report the offence, with the nature and circumstances of it, and the name of the offender, to the next meeting of the committee.

8. To the committee power is given to punish offences thus reported to them, by either

1. Moderate whipping.
2. Confinement upon bread and water in a dungeon.
3. Turning down from a higher class to a lower.
4. All or any of the above punishments in conjunction.

9. "*In case of removal into a prior class, the offender shall, from the time of making such order of removal, go through such prior class, and also the subsequent class or classes, in the same manner, and for the same time, as under his or her original commitment.*"

Section LII. is the converse of the section last preceding: it opens a door to pardon, upon the ground of extraordinary *good* behaviour.

1. If in any convict committed by justices in sessions, the visitors "shall at any time observe, or be satisfactorily informed of, any extraordinary diligence or merit," and make report accordingly, "the said justices" [shall] "may, if they think proper, advance him into a higher class."

2. When any convict has been promoted as above, the time of his confinement is to "be computed as if he or she had regularly passed through the prior class or classes."

3. With regard to any convicts committed by the judges,* whether originally, or upon a pardon granted upon that condition, for a certain term, the judges are, upon a like report, to have like power to alter and shorten his confinement.

4. Convicts, committed for life, may, upon being reported to the judges as aforesaid, be by them reported to his Majesty for mercy.

Observations.—This and the two last preceding sections bearing a close relation to one another, I shall consider them together. As to the last of the two paragraphs I have printed in italics, I must confess I am not altogether certain about the sense of it. My doubt is, whether a convict, upon his degradation into a lower class, is to be punished with respect to the severity of his treatment only, or, besides that, with respect to the duration of his confinement. I am inclined to imagine, both ways; but this construction seems not to be absolutely a necessary one.

A convict, suppose, has been committed for three years. He has served the first year of his time, and half his second. Of course, he has been half a year entered in the second class. He now commits an offence which the committee think proper to punish with degradation: he is turned down into the first class. What now is to become of him? Is he to stay two years and a half longer, to wit, one half year more in the first class, and a year in each of the other classes, or only one year and a half, that is, half a year in each of the three classes? In the first case, it seems hardly proper to say, that he has gone through "such prior class, and also the subsequent classes, in the same manner and for the *same time* as under his original commitment;" for it seems that he has gone through such prior class, and also the subse-

* At the Old Bailey, or on the circuits.

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quent classes (in the same manner, perhaps, but) for a *longer* time than he was to have had to go through them in under his original commitment. Had there, however, been no distinction in the treatment to be given to the respective classes, it must have been understood in this sense, as prolonging the total time; for the provision would have had nothing but the circumstance of time to operate upon.

Another doubt I have respecting the clause in section 50, which limits the time for which a governor is empowered to keep a convict in a dungeon upon bread and water to *three* days. This passage I know not very well how to reconcile to a clause in section 51. In this latter section, in case of an offence which, in the opinion of the governor, deserves a greater punishment than what he is himself authorized to inflict, he is directed to report it to the visitors, who, in such case, are authorized to order the offender to confinement in a dungeon, there to be kept on bread and water, if that be the mode of punishment they think proper to adopt, for ten days. Thus far, then, their power extends; to the confining a man for ten days. To the governor, in the last preceding section, it was not thought proper to give so great a power: his power was to extend no farther than to the confining a man for three days; yet in this same section, in the case above mentioned, where, by the supposition, he cannot punish by confinement for more than *three* days, the governor is empowered and "required" to order the convict to the dungeon, and "immediately, or the next time the visitors shall come," report the offence to them, for them to punish it. Now, for what time the convict committed in this manner to a dungeon is to remain there, is not expressly said: as no time is mentioned for his releasement, it seems impossible to put any other construction upon the clause than that he is to stay there till the coming of the visitors. But the visitors may not come for a fortnight.* So long, then, may a convict remain in one of these dungeons by the authority of a governor. The consequence is, that indirectly a power is given to this officer, of inflicting a punishment more than three times as great as that which it is thought proper, in direct terms, to empower him to inflict; and (as far as concerns this species of punishment) greater than that which it has been thought proper, in any terms, to empower the visitors to inflict. On this occasion, no mention, I observe, is made of dieting upon bread and water: the governor is simply required to order the offender to one of the dungeons. Is he then, or is he not, in this case, authorized to add that hardship to the confinement? Is the dieting in this manner, or is it not, to be regarded as an article included of course in the regimen of a dungeon? This power of punishing an offender previously to trial, is confined, I observe, to the governor: it is not given to the visitors.

The provision for disposing of the convicts into classes,† so as to be liable to be advanced or to be degraded,‡ seems an excellent expedient for strengthening the influence of the several authorities to which it is meant to subject them. It seems extremely well contrived for exciting emulation; for making a standing and palpable distinction betwixt good and ill behaviour, and for keeping their hopes and fears continually awake. If it should be thought proper to indulge the convicts with a share in the profit of the labour,‖ this would afford a farther means of adding to the distinction.

Here ends that part of the bill which concerns the establishment of labour-houses. What follows in the seven next sections is confined to the system of labour to be carried on upon rivers. The greater part of them are employed in re-enacting so many corresponding clauses of the present act.§ Concerning these, it will not be necessary to be very particular.

Section LIII. establishes, in general terms, the authority of the superintendents above spoken of.¶ It empowers them, upon the delivery of any *male* convict into their custody, to keep him, for the term mentioned in his sentence, to hard labour. This hard labour is to be applied "either to the raising of sand, soil, and gravel, or in any other laborious service for the benefit of the navigation of the Thames, or of such other navigable rivers or harbours as aforesaid;"** when on the Thames, "then at such places only, and subject to such limitations, as the Trinity-House shall from time to time prescribe."

Observations. — This, as to the greater part of it, is an exact transcript of the latter part of section 5 of the present act.††

Section LIV. prohibits superintendents from employing their convicts in delivering ballast to ships: it restricts the application of the labour to the above-mentioned object of benefiting the navigation of the rivers or harbours in question; except that it permits the employing them in making or repairing embankments or sea-walls.

* See Sect. 47.

† See Sect. 43. ‡ See Sect 51.

‖ See observations on Sect. 23.

§ The name given to the head person who is to have the charge of the convicts upon this establishment, is changed from *Overseer* (the word used in the former act) to *Superintendent.*

¶ See Sect. 32, 33, 34, 36.

** See Sect. 32.

†† By *the present act*, I mean all along the Stat. 16 Geo. III. ch. 43, being that which is in force at the time I write.

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Observations. — This section is an exact transcript of section 6 of the present act, with the addition only of the above exception. As this new kind of employment was meant to be permitted, the insertion of the above exception for that purpose, was no more than prudent, at least, if not absolutely necessary: for the main design in making of embankments or sea-walls is to save the land from being carried away or overflowed; and it may be of little or no service to the navigation. Mr. Campbell, superintendent of the Thames convicts, pursuing the spirit of his instructions rather than the letter, has already ventured to employ his convicts in some useful works on shore: perhaps it might not be amiss to add a retrospective clause for his indemnity.

As to the prohibition above mentioned, no reason for it is given. I imagine the reason to have been the preventing that intercommunication which, in such a case, would have been necessary between the convicts and the ships' crews. It can have nothing to do with any privileges of the Trinity-house; not being confined to the Thames, but extended to all rivers and harbours where convicts shall be employed.

Section LV. provides for the diet and apparel of convicts, under the care of superintendents, as section 40 did for those who are to be confined in the labour-houses. In point of diet, it directs that they be fed with bread, and any coarse or inferior food, and water or small beer, as in section 40; only the word "*meat*" is dropped here after the word coarse (whether by accident or design is more than I can determine.) The apparel it leaves altogether to the "discretion of the superintendents:" it likewise prohibits the supplying the convicts with any other food, drink, or clothing, under a penalty of not more than ten pounds, nor less than forty shillings.

Observations. — This section is the same as section 7 of the present act; except with regard to the penalty, which, by the present act, is not to be more than forty shillings.

Section LVI. invests superintendents with the power of correction. A convict refusing to perform his work, or "*guilty of any other misbehaviour or disorderly conduct,*" may be punished by the superintendent, by "such whipping, or other moderate punishment, as may be inflicted by law on persons committed to a house of correction for hard labour."

Observations. — This section is the same in every respect as section 8 of the present act.

Section LVII. provides a supply for convicts of this description, upon their discharge, to the same amount as section 52 did for the convicts in the labour-houses. It likewise provides for the discharge of any convict, previous to the expiration of his term, upon a letter written, upon a recommendation from the judges as in section 60, by a secretary of state. The sum of money, and the clothing, it refers, in this case, to the determination of the above judges.*

Observations. — This section is the same, in every respect, as section 9 of the present act.

Section LVIII. makes provision in the lump for the assistance, medical and religious, to be given to the convicts in question, as likewise for the burial of such as may chance to die, as also for these and all other expenses attending the keeping of the convicts under the care of such superintendents. These expenses it directs to be annually laid before the House of Commons, and undertakes, that, after deducting the net profits (if any) of the labour, they shall be provided for in the next supplies granted by parliament. The chaplains, surgeons, and apothecaries to be provided, are to be such as "the superintendent shall find it expedient, or shall be required" (it does not say by whom) "from time to time to employ." The convicts are to be "*buried* in the most commodious parts of the shores, in or near which they have been employed," and "according to the form prescribed by the liturgy of the Church of England. The necessary charges of such funerals, and also of the coroners, who shall sit on the bodies of such convicts, are to be defrayed in the manner above mentioned."

Section LIX. provides, that such chaplains shall read morning and evening *prayer*, and preach a *sermon* after each, every Sunday, as also on Christmas-day and Good Friday.

Observations.—These two sections are so many additions to the present act. In this the whole business was referred so entirely to the discretion of the superintendent, that no express provision was made for either the spiritual or medical assistance, or the burial of the convicts. Neither was any provision made for the coroner's fees; whereby that expense (which was not altogether a trifling one) falls solely as yet upon the counties bordering that part of the Thames they are employed upon; that is, upon the counties of Kent and Essex, one or both of them. These omissions are supplied in the bill before, as it was highly requisite they should be.

In the meantime, they have been voluntarily supplied by the attention of Mr. Campbell, the present superintendent. A surgeon of a battalion attends the convicts once a-day; and the surgeon-general of the artillery visits them once a-week. A clergyman, sent by the Countess of Huntingdon, gives them the assistances belonging to his profession, without any gratuity from Mr. Campbell, or any ex-

* See Sections 11, 21, 24, 26, 30, 47, 52.

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pense to the establishment. Not content with performing the ordinary duty in the manner provided for in the bill, he is assiduous in giving them the benefit of his instructions by every means, and at every opportunity in his power. He has distributed Bibles among them; and has endeavoured to direct their attention to the sacred writings, by giving them rewards for performing little exercises proposed to them as tests of their proficiency.

The loose and general way in which these and other exigencies are provided for, with respect to convicts of the description now before us, especially when compared with the strict and minute attention paid to the regimen of the labour-houses, are strong testimonies of the extraordinary confidence reposed in the present superintendent. I have never heard of any fact so much as surmised, that afforded the least reason for deeming that confidence misplaced, and I have much reason for entertaining a contrary opinion; yet I should be sorry to see the merit of this individual officer made an argument for entailing powers so unlimited upon what person soever may chance at any time hereafter to bear his office. The establishment upon the Thames has been acknowledged to be intended but as a measure of experiment; it is to be hoped, therefore, that when the effect of the regimen prescribed for the hard-labour houses has been approved by experience, it will be extended to the establishments upon rivers. *Jealousy, not confidence, is the characteristic of wise laws.*

Section LX. enjoins the governors and superintendents to make returns of the state of the convicts under their care. These returns are to contain the following particulars: —

1. The name of each convict committed to their custody.
2. His offence.
3. His sentence.
4. His state of body.
5. His behaviour while in custody.

They are also to exhibit the names of all such convicts, as, since the last return, have passed out of their custody, whether

1. By death.
2. By escape.
3. By releasement, whether by order of a Secretary of State or otherwise.

For the purpose of making these returns, regular *books* are to be kept by the persons who are respectively to make them.

They are to be made by the superintendent of the Thames convicts to the King's Bench, the first day of every term; by the governors of labour-houses, and the superintendents of any other work, to the judges, as before,* at each assize; to the justices of the peace for every county and division within the district, at the two sessions holden next after Easter and Michaelmas.

They are to be made upon oath, to be administered to them by the respective courts.

Observations.—The ordering these returns is a measure of excellent use in furnishing *data* for the legislator to go to work upon. They will form altogether a kind of *political barometer*, by which the effect of every legislative operation relative to the subject, may be indicated and made palpable. It is not till lately that legislators have thought of providing themselves with these necessary documents. They may be compared to the bills of mortality published annually in London; indicating the moral health of the community (but a little more accurately, it is to be hoped,) as these latter do the physical.

It would tend still farther to forward the good purposes of this measure, if the returns, as soon as filed, were to be made public, by being printed in the Gazette, and in the local newspapers. They might also be collected once a-year, and published all together in a book.†

Section LXI. provides a penalty for escapes. This penalty, if the convict had been ordered to hard labour in lieu of capital punishment, is death: if in lieu of transportation, in the first instance, an addition of three years to his term of servitude; in the second instance, death.

Observations.—I cannot help entertaining some doubts of the expediency of capital punishment in case of escapes. *Punishments that a man has occasion to choose out of, should be commensurable.* That which is meant to appear the greater, should either be altogether of the same kind, or include one that is of the same kind with the lesser; otherwise, the danger always is, considering the variety of men's circumstances and tempers, lest the punishment which appears the greater to the legislator and the judge, as being in general the greater, should appear the lesser to the delinquent. On the other hand, you may be sure of making your punishment appear the greater to the delinquent, when, keeping to the same species, you can either increase it in degree, or add a punishment of another species. A fine may to one man be worse

* See Sections 11, 21, 24, 26, 30. 47, 52.

† A few years ago, I began sketching out a plan for a collection of documents of this kind, to be published by authority, under the name of *bills of delinquency*, with analogy to the *bills of mortality* above spoken of: but the despair of seeing anything of that sort carried into execution, soon occasioned me to abandon it. My idea was to extend it to all persons convicted on criminal prosecutions. Indeed, if the result of all law proceedings in general were digested into tables, it might furnish useful matter for a variety of political speculations.

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than imprisonment; imprisonment may to another man be worse than a fine: but a fine of twenty pounds must to every man be worse than a fine of ten pounds; imprisonment for six months, than imprisonment for three: so also must imprisonment, though it were but for a day, added to a fine of ten pounds, than a fine of ten pounds by itself.

In the present instance, it may very well happen, that a convict may even prefer certain death to his situation in a labour-house or on board a lighter: in such case, the punishment of death, it is plain, can have no hold on him. What is still more likely to happen is, that although he would not prefer *certain* death to such a situation, he would yet prefer such a *chance* of death as he appears likely to be liable to, after having effected his escape. I say, after *having* effected it: for the *attempt*, I observe, is not made punishable in this manner.

It may be objected in the first case, that if death were preferable in his eyes to servitude, he would inflict it on himself. But the inference is not just. He may be restrained by the dread of future punishment; or by that timidity which, though it might suffer him to put himself in the way of dying at a somewhat distant and uncertain period by the hand of another, would not suffer him, when the time came, to employ his own. In either of these cases, capital punishment, so far from acting as a preventative, may operate as an inducement.

In cases of escape, little, it should seem, is to be done in the way of restraint, by means that apply only to the mind: physical obstacles are the only ones to be depended on. To the catalogue of these, large additions and improvements have been made, and still more, as I have ventured to suggest, might be made, if necessary, by the present bill. The degree of security which these promise to afford, seems to be quite sufficient, without having recourse to capital punishment. This will save the unpopularity of inflicting a punishment so harsh, for an offence so natural.

In preference to capital punishment, I would rather be for applying hard labour for life. Such a punishment is already admitted of by this bill.*

Section LXII. inflicts penalties on such persons as may be instrumental to escapes.

1. Any persons rescuing such a convict, either from the place of his confinement, or from the custody of any who are conveying him to it, or assisting in such rescue, are to suffer as for rescuing a felon, after judgment, from a gaoler.

2. Any persons who, by supplying arms, or instruments of disguise, or otherwise, assist a convict in escaping, or attempting to escape, are to suffer as for felony.

3. Persons who, having the custody of such a convict, or being employed by one that has, permit him to escape, if *voluntarily*, are also to suffer as for felony.

4. If *negligently*, are to be deemed guilty of a misdemeanor, and are to be liable to a fine not exceeding ten pounds, or to imprisonment for not more than six months, or to both.

Observations. — The punishment here appointed for negligently permitting an escape, is, I fear, liable to be too small; especially considering, that a wilful permission of this sort may frequently, for want of direct proof, be no otherwise punishable than as an act of negligence. If a convict of this stamp be a man of substance, as may sometimes happen, he may be very well able to give an underkeeper such a reward for his connivance as may very well indemnify him against the chance of losing ten pounds, and suffering even a six months' imprisonment. What is remarkable, this punishment is no greater than that which, in another part of this bill,† is appointed for the trivial offence of supplying a convict with prohibited meat or drink. Instead, therefore, of saying that it should not be *more* than the *quantum* specified, I would rather say that it should not be *less*. At any rate, it should contain some imprisonment; for, against imprisonment, a man cannot be so completely indemnified as against fine.

I see no punishment for the *attempt* to rescue, or the assisting in such attempt: yet the attempt to rescue is an offence as much more atrocious than the assisting in a quiet attempt to escape, as robbery is than simple theft.

What is the use of describing the punishment of a rescuer in a round-about way by reference? why not make it felony at once? The standing punishment for the rescuing of a felon (meaning a simple felon) is no more than simple felony. It ought, however, to be greater, or else the assisting in a quiet attempt to escape ought to be less: *otherwise the offender has nothing to determine his choice in favour of an offence less mischievous, in preference to an offence more mischievous.*

I take for granted it could never have been the intention that, under this clause, the rescuer of a capital felon pardoned on condition, should suffer capitally.

Section LXIII. is calculated to facilitate the prosecution of persons concerned in escapes.

1. Convicts escaping may be *tried* in the county in which they are retaken.

2. In a prosecution for an escape or rescue,

* See Sect. 52.

† Sections 41, 55.

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or attempt to escape or rescue, either against the convict himself, or any person assisting him, the certificate above mentioned (after proof made that the culprit is the same that was delivered with such certificate) is to be deemed conclusive evidence of his being the person who was ordered to the confinement therein mentioned.

Observations. — To show the beneficial effects of these provisions, in saving useless trouble, the way would be to state and explain the several rules of law which they dispense with; but this is a piece of information that would not be very interesting to readers at large, and lawyers have no need of it.

Section LXIV. appoints the mode of procedure for the recovery of the pecuniary penalties inflicted by this bill, when no particular method is prescribed.* It is to be summary, before two justices of the peace: the imprisonment, in case of failure, is to be for not less than one month, nor more than six. The other provisions are what are usually inserted in cases of summary procedure.

Section LXV. is another provision of procedure, dispensing, for the purposes of this act, with the general rule of law, that judges must be *in* the jurisdiction *for* which they are doing business. It sometimes happens, that the court-house for a town that is a county of itself, is the court-house for the county at large, but the judges' lodgings are not situate in both. It therefore declares, that, for the above purposes, they shall be "construed and taken to be situate in *both*."

Observations. — Here the hand of the lawyer is visible: a plain man would have contented himself with saying, that a judge of the description in question might do such business as might be done at his lodgings, for any county, although he were in an adjacent one. But there never was yet a lawyer, who, when either would equally well serve the turn, did not prefer a false account to the true one. The old maxim, which, to another man would seem inflexible, "nothing can be in two places at once," bows down before him. These paradoxes are a kind of professional wit, which is altogether innocent in the intention, though not altogether harmless in its effects. This is no reflection on the author: it is only attributing to him, in common with every body, what nobody is ashamed of.

Section LXVI. allows persons prosecuted for anything done in pursuance of this bill, to plead the *general issue:* if the suit terminate in their favour, gives them treble costs; if against them, and by verdict, exempts them from costs, unless the judge certify his approbation of the verdict.

* See Sections 40, 55. See also Sections 18, 41, 62, where other modes of procedure seem to be intended.

Section LXVII. limits the place and time of such a prosecution. The jurisdiction is to be that wherein the act was done; the time, within six months of it.

Section LXVIII. and last, repeals the present act, except with regard to such offenders whose terms are unexpired.

Observations. — Perhaps the simpler, and more commodious way, would be to take a section by itself, for giving the requisite continuance to the above terms, and doing what else is necessary (for I suspect that more may be necessary) to prevent the unintended consequences of such a repeal; and then, in another section, to repeal the act simply and absolutely.

Some hundred years hence, when conciseness shall be deemed preferable to prolixity, and the parliamentary style shall have been divested of all those peculiarities which distinguish it, to its disadvantage, from that of common conversation, the formulary for that purpose may be as follows: —

The Act 16 *George III. c.* 43. *stands repealed.*

The Act 16 George III. may be repealed, but the memory of the proposer of it will survive.

SUPPLEMENTAL HINTS AND OBSERVATIONS.

The following observations, though they connect with the subject of Section 1, could not well have been introduced previously to Sections 30, 43, and 52.

Besides those stated under Section 1, a farther advantage which the punishment proposed to be established in the labour-houses has over transportation, is that of superior *divisibility;* by which means the quantity of it is capable of being proportioned with greater nicety, to the different degrees of malignity in different offences. The punishment of hard labour is divisible in point of *intensity* as well as of *duration;* and a division of it in the former of these ways is actually directed to be made in section 43. That of transportation is divisible no otherwise than in point of duration. In this point it is, in its own nature, indeed, incapable of being divided to as great a degree of nicety as hard labour is. Very little advantage, however, of this property of it, has been made in practice. I am not certain whether there may not have been a few instances in which convicts have been transported for as short a time as three years; but in general, the only terms in use have been for seven years, for fourteen years, and for life. In the duration of the confinement in the hard-labour houses, as many different periods are allowed on one occasion or an-

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other, as may be marked out between one year and seven years. I cannot see, however, why even a greater latitude than this should not be admitted of, especially on the side of diminution; in other words, why a shorter time than a year should in no case be allowed. One should think, that for many of the offences that are punishable by transportation, a less term than one year, and for petty larceny, a less term than two years (the terms respectively allowed of,) might suffice. But on this head I shall insist no farther, as it would lead me from the particular object of the proposed bill, to discussions that belong to a general survey of criminal jurisprudence.

Another point in which the punishment proposed by the bill, has the advantage of transportation, is that of being in the way of being *remitted* at any time, on the ground of merits displayed subsequently to the offence. Provision, we may remember, is made for that purpose in section 52. But a convict who is transported, though he be not out of the *reach* of pardon, is out of all *hope* of pardon on that ground, since he lies out of the reach of all observation which could dictate the expediency of such indulgence.

The following hints connect, in some measure, with the subject of section 13, and with a principle adopted in section 40.

A suitable *motto* over the doors of these houses might have many good effects. It might contribute to inculcate the justice, to augment the terror, and to spread the notoriety of this plan of punishment.

The following sentence might, perhaps, answer the purpose:—"*Had they been industrious when free, they need not have drudged here like slaves.*"

Or this,—"*Violence and knavery*
Are the roads to slavery."

The latter is that which I should prefer, on many accounts. It is more expressive, indicating more particularly the kind of misbehaviour that was the cause of their punishment; and the proverbial turn of it, together with the jingle, will render it more apt to be circulated and remembered by the people. *Violence* respects those who may be committed upon a pardon for robbery, or those who may have been committed in any way for malicious mischief; *knavery*, the common run of thieves and sharpers. *Fraudulent* and *forcible*, is a division that runs in a manner through the whole catalogue of offences against the police.

The efficacy of this motto might be still farther assisted by a *device*. Over the door there might likewise be a bas-relief, or a painting, exhibiting a wolf and a fox yoked together to a heavy cart, and a driver whipping them: the wolf as an emblem of violence and mischief; the fox of knavery. In the back ground might be a troop of wolves ravaging a flock of sheep, and a fox watching a hen-roost.

Bas-reliefs, if made in artificial stone, might be cast, a number of them in the same mould, and be the same for all the labour-houses.

Should it be thought an improvement, a monkey, as being more peculiarly the emblem of wanton mischief, might be added to the above train. Among the offences which it is proposed should be punishable in this manner, are many that come under the denomination of malicious mischief. In this case, the inscription, instead of "*Violence and knavery*," had need to be, "*Mischief, rapine, knavery.*" The danger is, lest the addition of an animal, whose manners are calculated more constantly to excite merriment by their drollery, than displeasure by their mischievousness, should give such a cast of ridicule to the whole contrivance, as should counteract the design of it.

The device adopted in the house of correction at Mentz, and other foreign prisons, according to the account given of it by Mr. Howard,* does not seem so well imagined as it might be. It consists of a waggon drawn by two stags, two lions, and two wild boars; and the purport of the inscription is, that "if wild beasts can be tamed to the yoke, we should not despair of reclaiming irregular men." The equipage here represented, has nothing in it that is very characteristic of the persons whose conditions it is meant to allegorize; and there seems to be something awkward in making the hopes of succeeding, with regard to men, rest, as it were, upon no better footing than the success of the contrivance there imagined respecting brutes. I have read of hogs being now and then employed in some parts of France to help to draw a plough. We have read of gods and goddesses, and now and then, perhaps, a Roman general in his triumph, who have been drawn by lions; but I never heard yet of a stag's being yoked to a waggon, either as a truth, or in the way of fable; much less appearance is there of its being acknowledged for a known truth that waggons may be made to draw with a team composed of stags, and boars, and lions.

Let me not be accused of trifling: those who know mankind, know to what a degree the imagination of the multitude is liable to be influenced by circumstances as trivial as these.

With regard to the site of the building,† might it not be a proper direction to give, that care should be taken to have such a quantity of ground all around the building included in the purchase, as might prevent any houses from being built within such a

* P. 108. † See Sect. 11.

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number of yards distance? An establishment of this sort might, in some way or other, afford inducements to people of the lower classes to settle near it. But the near vicinity of any house might be productive of several bad effects: it might facilitate escapes; it would take away from the sequestrated appearance of the scene; it would put the convicts and their neighbours into the way of engaging in conversations which might be of prejudice to both.

With regard to such convicts as it may be thought expedient to put to works of the sedentary kind, it might be of use, on the score of economy, if such of them as have a trade of their own that can be carried on in the house, should be permitted to work at that trade, in preference to another. Hatters, stocking-weavers, tailors, shoemakers, and many other handicrafts, might carry on their trades in such a situation, nearly as well as anywhere else; so it were in the wholesale way, and not for particular employers. The trades that will be set up in the house for the instruction of the convicts will hardly be of the most lucrative kind; and if they were, it can hardly be expected that a man should earn as much at a trade that is new to him, as at one he has been bred up to. The difference would be so much loss to the public during the time a convict continues in the labour-house. But it might, besides that, be a loss to him, and through him to the public, for the remainder of his life: if his confinement has been long, he may have lost, by the time it is over, a great part of his skill. In the compass of a few years, a course of hard labour may have irrecoverably deprived a man of that pliancy of muscle and nicety of touch that is necessary in some trades.

The convicts who come within the view of this institution may be distinguished into two classes: the one consisting of malefactors by profession, who possess no honest talent; the other of persons of different trades and employments, who have subjected themselves to the censure of the laws by an occasional deviation from integrity. The first cannot but be benefited by the institution in point of talent, as well as in other respects; the others, howsoever benefited in other respects, may, in many cases, be sufferers in point of talent, if their industry be forced out of its old channels

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TABLE referred to in SECTIONS 3, 5, 6, 9, & 11.

I.	II.	III.	IV.	V	VI.	VII.	VIII.
No. of Districts.	Districts in each Circuit.	Place of Meeting in each District.	Counties in each District.	Justices for each County.	Convicts in a Year in each County.	Convicts to be provided for in each District.	Sums to be allotted to each County. (d)
I.	HOME CIRCUIT. 1st.	Chelmsford	Essex	3	18	90	
			Hertfordshire	3	12		
II.	2d.	Maidstone	Kent	3	26	99	
			Canterbury	1	1		
			Sussex	3	6		
III.	3d.	Kingston	Surrey	5	42	126	
IV.	MIDLAND CIRCUIT. 1st.	Lincoln	Derbyshire	2	8	90	
			Lincolnshire	(a) 3	10		
			Lincoln	1	1		
			Nottinghamshire	2	6		
			Nottingham	1	3		
			Rutlandshire	1	2		
V.	2d.	Warwick	Leicestershire	2	4	108	
			Leicester	1	2		
			Northamptonshire	2	7		
			Warwickshire	2	18		
			Coventry	1	5		
VI.	NORFOLK CIRCUIT. 1st.	Bedford	Bedfordshire	2	7	75	
			Buckinghamshire	2	9		
			Cambridgeshire	2	4		
			Ely	1	2		
			Huntingdonshire	2	3		
VII.	2d.	Norwich	Norfolk	3	15	93	
			Norwich	1	2		
			Suffolk	3	14		
VIII.	NORTHERN CIRCUIT. 1st.	Durham	Cumberland	2	5	(e) 51	
			Durham	2	6		
			Northumberland	2	(c) 5		
			Berwick	(b)			
			Newcastle	1	(d)		
			Westmoreland	1	1		
IX.	2d.	Lancaster	Lancashire	5	26	78	
X.	3d.	York	Yorkshire	(f) 6	30	105	
			York	1	3		
			Kingston	1	2		

(a) Viz. for each of its *Parts*, one.
(b) The town of Berwick is specified in § 5, p. 7 of the bill, among the jurisdictions comprised within the northern circuit: but no committee-justices are allowed to it in § 6.
(c) The average number of convicts for Berwick is computed in the lump with the number for Northumberland.
(d) No number of convicts is stated for Newcastle in the bill: in the table annexed to the bill it is stated at *five*. This makes a difference of *fifteen* in the number to be provided for.
(e) The number in the table is 66. See note (d).
(f) Viz. for each Riding, *two*.

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TABLE referred to in SECTIONS 3, 5, 6, 9, & 11.

I.	II.	III.	IV.	V.	VI.	VII.	VIII.
No. of Districts.	Districts in each Circuit.	Place of Meeting in each District.	Counties in each District.	Justices for each County.	Convicts in a Year in each County.	Convicts to be provided for in each District.	Sums to be allotted to each County. (i)
XI.	OXFORD CIRCUIT. 1st.	Oxford . .	Berkshire	3	13	69	
			Oxfordshire . . .	3	10		
XII.	2d.	Gloucester	Gloucestershire .	2	22	123	
			Gloucester . . .	1	3		
			Herefordshire . .	2	8		
			Monmouthshire .	2	8		
XIII.	3d.	Worcester	Shropshire . . .	2	16	135	
			Staffordshire . .	2	15		
			Litchfield	1	1		
			Worcestershire .	2	10		
			Worcester	1	3		
XIV.	WESTERN CIRCUIT. 1st.	Exeter . .	Cornwall	3	12	105	
			Devonshire . . .	3	22		
			Exeter	1	1		
XV.	2d.	Salisbury .	Dorsetshire . . .	2	10	135	
			Poole	1	1		
			Hampshire	2	19		
			Southampton . .	1	1		
			Wiltshire	2	14		
XVI.	3d.	Wells . . .	Somersetshire . .	4	25		
			Bristol	2	17		
XVII.		London . . .	London	5	107	321	
XVIII.		London, &c.	Middlesex	5	296	888	
XIX.	WELSH DISTRICT. (g)	Chester . .	Cheshire	3	16	48	
			Welsh Counties at large (h)	12			
			Carmarthen (l) .	1			
Total of the Convicts for all the Districts . . .					955(k)	2865 (k)	

(g) The county of the city of Chester is, in § 3, p. 5 of the bill, among the jurisdictions included in the computation of the number of convicts for the Welsh district: it is also specified in § 5, p. 6, among the jurisdictions comprised within that district: but no committee-justices are allowed it by § 6. The county of the town of Haverford-west is, in § 3, p. 5, included in the computation of the average number of convicts for the Welsh district: but it is not specified in § 5, p. 6, among the jurisdictions comprised within that district; nor are any committee-justices allowed to it in § 6.

(h) Viz. for each, *one*.

(i) Blanks are left for these in the bill: a column is here allotted to them for the convenience of any one who may choose to fill up the blanks with a pen, when those in the bill are filled up.

(k) But see note (d).

(l) Carmarthen is among the jurisdictions included, &c. see note (g): but no committee-justices are allowed it.

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PANOPTICON;

OR,

THE INSPECTION-HOUSE:

CONTAINING THE

IDEA OF A NEW PRINCIPLE OF CONSTRUCTION

APPLICABLE TO

ANY SORT OF ESTABLISHMENT, IN WHICH PERSONS OF ANY DESCRIPTION ARE TO BE KEPT UNDER INSPECTION;

AND IN PARTICULAR TO

PENITENTIARY-HOUSES,

PRISONS,
HOUSES OF INDUSTRY,
WORK-HOUSES,

POOR-HOUSES,
MANUFACTORIES,
MAD-HOUSES,

LAZARETTOS,
HOSPITALS,
AND SCHOOLS:

WITH

A PLAN OF MANAGEMENT

ADAPTED TO THE PRINCIPLE:

'N A SERIES OF LETTERS,

WRITTEN IN THE YEAR 1787, FROM CRECHEFF IN WHITE RUSSIA,
TO A FRIEND IN ENGLAND.

BY JEREMY BENTHAM,
OF LINCOLN'S INN, ESQUIRE.

DUBLIN, PRINTED: LONDON, REPRINTED; AND SOLD BY T. PAYNE,
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PANOPTICON,

OR,

THE INSPECTION-HOUSE, &C.

PREFACE.

Morals reformed—health preserved—industry invigorated—instruction diffused—public burthens lightened—Economy seated, as it were, upon a rock—the gordian knot of the Poor-Laws not cut, but untied—all by a simple idea in Architecture!——Thus much I ventured to say on laying down the pen—and thus much I should perhaps have said on taking it up, if at that early period I had seen the whole of the way before me. A new mode of obtaining power of mind over mind, in a quantity hitherto without example: and that, to a degree equally without example, secured by whoever chooses to have it so, against abuse. —Such is the engine: such the work that may be done with it. How far the expectations thus held out have been fulfilled, the reader will decide.

The Letters which compose the body of this tract were written at Crecheff in Russia, and from thence sent to England in the year 1787, much about the same time with the Defence of Usury. They were addressed to a particular person, with a view to a particular establishment then in contemplation (intelligence of which had found its way to me through the medium of an English newspaper), and without any immediate or very determinate view to general publication. The attention of the public in Ireland having been drawn to one of the subjects to which they relate, by the notice given not long ago by the Chancellor of the Exchequer, of a disposition on the part of government there, to make trial of the Penitentiary system, it is on that account that they now see the light through the medium of the Irish press.

They are printed as at first written, with no other alteration than the erasure of a few immaterial passages, and the addition of a Postscript, stating such new ideas as have been the fruit of a more detailed and critical examination, undertaken chiefly with an eye to the particular establishment last mentioned, and assisted by professional information and advice.

In running over the descriptive part of the letters, the reader will find it convenient to remember, that alterations, as stated in the Postscript, have been made, though he need not at that period trouble himself with considering what they are: since in either shape the details will serve equally well for the illustration of the general principle, and for the proof of the advantages that may be derived from it.

In what concerns the Penitentiary system, I may be observed to have discussed, with rather more freedom than may perhaps be universally acceptable, a variety of measures either established or proposed by gentlemen who have laboured in the same line. A task this, which I would gladly have avoided: but complete justice could not otherwise have been done to the plan here proposed, nor its title to preference placed in a satisfactory point of view. Among the notions thus treated, it is with pleasure rather than regret that I observe several which on a former occasion I had myself either suggested or subscribed to. I say with pleasure: regarding the incident as a proof of my having no otherwise done by others than as I not only would be done by, but have actually done by myself: a consideration which will, I hope, make my apology to the respectable gentlemen concerned, and assist their candour in recommending me to their forgiveness. If by the light of reciprocal animadversion I should find myself enabled to rectify any errors of my own which may still have escaped me, the correction, instead of being shrunk from as a punishment, will be embraced as a reward.

In point of method and compression, something might have been gained, had the whole, Letters and Postscript together, been new cast, and the supplemental matter worked up with the original. But time was wanting; and, if the invention be worth any thing, the account given of it will not be the less amusing or less instructive, for being exhibited in an historical and progressive point of view.

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The concluding Letter on Schools is a sort of *jeu d'esprit*, which would hardly have presented itself in so light a form, at any other period than at the moment of conception, and under the flow of spirits which the charms of novelty are apt enough to inspire. As such, it may possibly help to alleviate the tedium of a dry discussion, and on that score obtain the pardon, should it fail of receiving the approbation, of the graver class of readers.

LETTER I.

IDEA OF THE INSPECTION PRINCIPLE.

Crecheff in White Russia,
——— 1787.

DEAR ****,—I observed t'other day in one of your English papers, an advertisement relative to a HOUSE of CORRECTION therein spoken of, as intended for *******. It occurred to me, that the plan of a building, lately contrived by my brother, for purposes in some respects similar, and which, under the name of the *Inspection House*, or the *Elaboratory*, he is about erecting here, might afford some hints for the above establishment.* I have accordingly obtained some drawings relative to it, which I here inclose. Indeed I look upon it as capable of applications of the most extensive nature; and that for reasons which you will soon perceive.

To say all in one word, it will be found applicable, I think, without exception, to all establishments whatsoever, in which, within a space not too large to be covered or commanded by buildings, a number of persons are meant to be kept under inspection. No matter how different, or even opposite the purpose: whether it be that of *punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing* in any branch of industry, or *training the rising race* in the path of *education:* in a word, whether it be applied to the purposes of *perpetual prisons* in the room of death, or *prisons for confinement* before trial, or *penitentiary-houses*, or *houses of correction*, or *work-houses*, or *manufactories*, or *mad-houses*, or *hospitals*, or *schools*.

It is obvious that, in all these instances, the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained. Ideal perfection, if that were the object, would require that each person should actually be in that predicament, during every instant of time. This being impossible, the next thing to be wished for is, that, at every instant, seeing reason to believe as much, and not being able to satisfy himself to the contrary, he should *conceive* himself to be so. This point, you will immediately see, is most completely secured by my brother's plan; and, I think, it will appear equally manifest, that it cannot be compassed by any other, or to speak more properly, that if it be compassed by any other, it can only be in proportion as such other may approach to this.

To cut the matter as short as possible, I will consider it at once in its application to such purposes as, being most complicated, will serve to exemplify the greatest force and variety of precautionary contrivance. Such are those which have suggested the idea of *penitentiary-houses:* in which the objects of *safe custody, confinement, solitude, forced labour*, and *instruction*, were all of them to be kept in view. If all these objects can be accomplished together, of course with at least equal certainty and facility may any lesser number of them.

LETTER II.

PLAN FOR A PENITENTIARY INSPECTION-HOUSE.

BEFORE you look at the plan, take in words the general idea of it.

The building is circular.

The apartments of the prisoners occupy the circumference. You may call them, if you please, the *cells*.

These *cells* are divided from one another, and the prisoners by that means secluded from all communication with each other, by *partitions* in the form of *radii* issuing from the circumference towards the centre, and extending as many feet as shall be thought necessary to form the largest dimension of the cell.

The apartment of the inspector occupies the centre; you may call it if you please the *inspector's lodge*.

It will be convenient in most, if not in all cases, to have a vacant space or *area* all round, between such centre and such circumference. You may call it if you please the *intermediate* or *annular* area.

About the width of a cell may be sufficient for a *passage* from the outside of the building to the lodge.

Each cell has in the outward circumference,

* The sudden breaking out of the war between the Turks and Russians, in consequence of an unexpected attack made by the former on the latter, concurred with some other incidents in putting a stop to the design. The person here spoken of, at that time Lieutenant-Colonel Commandant of a battalion in the Empress's service, having obtained a regiment and other honours for his services in the course of the war, is now stationed with his regiment in a distant part of the country.

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a *window*, large enough, not only to light the cell, but, through the cell, to afford light enough to the correspondent part of the lodge.

The inner circumference of the cell is formed by an iron *grating*, so light as not to screen any part of the cell from the inspector's view.

Of this grating, a part sufficiently large opens, in form of a *door*, to admit the prisoner at his first entrance; and to give admission at any time to the inspector or any of his attendants.

To cut off from each prisoner the view of every other, the partitions are carried on a few feet beyond the grating into the intermediate area: such projecting parts I call the *protracted partitions*.

It is conceived, that the light, coming in in this manner through the cells, and so across the intermediate area, will be sufficient for the inspector's lodge. But, for this purpose, both the windows in the cells, and those corresponding to them in the lodge, should be as large as the strength of the building, and what shall be deemed a necessary attention to economy, will permit.

To the windows of the lodge there are *blinds*, as high up as the eyes of the prisoners in their cells can, by any means they can employ, be made to reach.

To prevent *thorough light*, whereby, notwithstanding the blinds, the prisoners would see from the cells whether or no any person was in the lodge, that apartment is divided into quarters, by *partitions* formed by two diameters to the circle, crossing each other at right angles. For these partitions the thinnest materials might serve; and they might be made removeable at pleasure; their height, sufficient to prevent the prisoners seeing over them from the cells. Doors to these partitions, if left open at any time, might produce the thorough light. To prevent this, divide each partition into two, at any part required, setting down the one-half at such distance from the other as shall be equal to the aperture of a door.

These windows of the inspector's lodge open into the intermediate area, in the form of *doors*, in as many places as shall be deemed necessary to admit of his communicating readily with any of the cells.

Small *lamps*, in the outside of each window of the lodge, backed by a reflector, to throw the light into the corresponding cells, would extend to the night the security of the day.

To save the troublesome exertion of voice that might otherwise be necessary, and to prevent one prisoner from knowing that the inspector was occupied by another prisoner at a distance, a small *tin tube* might reach from each cell to the inspector's lodge, passing across the area, and so in at the side of the correspondent window of the lodge. By means of this implement, the slightest whisper of the one might be heard by the other, especially if he had proper notice to apply his ear to the tube.

With regard to *instruction*, in cases where it cannot be duly given without the instructor's being close to the work, or without setting his hand to it by way of example before the learner's face, the instructor must indeed here as elsewhere, shift his station as often as there is occasion to visit different workmen; unless he calls the workmen to him, which in some of the instances to which this sort of building is applicable, such as that of imprisoned felons, could not so well be. But in all cases where directions, given verbally and at a distance, are sufficient, these tubes will be found of use. They will save, on the one hand, the exertion of voice it would require, on the part of the instructor, to communicate instruction to the workmen without quitting his central station in the lodge; and, on the other, the confusion which would ensue if different instructors or persons in the lodge were calling to the cells at the same time. And, in the case of hospitals, the quiet that may be insured by this little contrivance, trifling as it may seem at first sight, affords an additional advantage.

A *bell*, appropriated exclusively to the purposes of *alarm*, hangs in a *belfry* with which the building is crowned, communicating by a rope with the inspector's lodge.

The most economical, and perhaps the most convenient, way of *warming* the cells and area, would be by flues surrounding it, upon the principle of those in hot-houses. A total want of every means of producing artificial heat might, in such weather as we sometimes have in England, be fatal to the lives of the prisoners; at any rate, it would often times be altogether incompatible with their working at any sedentary employment. The flues, however, and the fire-places belonging to them, instead of being on the outside, as in hot-houses, should be in the inside. By this means, there would be less waste of heat, and the current of air that would rush in on all sides through the cells, to supply the draught made by the fires, would answer so far the purpose of ventilation. But of this more under the head of Hospitals.*

* There is one subject, which, though not of the most dignified kind, nor of the most pleasant kind to expatiate upon, is of too great importance to health and safe custody to be passed over unconsidered: I mean the provision to be made for carrying off the result of necessary evacuations. A common necessary might be dangerous to security, and would be altogether incompatible with the plan of solitude. To have the filth carried off by the attendants, would be altogether as incompatible with cleanliness; since without such a degree of regularity as it would be difficult, if not ridiculous, to attempt to enforce in case of health, and altogether impossible in case of sickness, the air of each cell, and by that means the

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LETTER III.

EXTENT FOR A SINGLE BUILDING.

So far as to the characteristic parts of the principle of construction. You may now, perhaps, be curious to know to what extent a building upon this principle is capable of being carried, consistently with the various purposes to which it may come to be applied. Upon this subject, to speak with confidence belongs only to architects by profession. Indulge me, however, with a few words at a venture.

As to the *cells*, they will of course be more or less spacious, according to the employment which it is designed should be carried on in them.

As to the *whole building*, if it be too small, the circumference will not be large enough to afford a sufficient number of cells: if too large, the depth from the exterior windows will be too great; and there will not be light enough in the lodge.

As to this individual building of my brother's, the dimensions of it were determined by the consideration of the most convenient scantlings of the timbers, (that being in his situation the cheapest material,) and by other local considerations. It is to have two stories, and the diameter of the whole building is to be 100 feet out and out.

Merely to help conception, I will take this size for an example of such a building as he would propose for England.

Taking the diameter 100 feet, this admits of 48 *cells*, 6 feet wide each at the outside, walls included; with a *passage* through the building, of 8 or 9 feet.

I begin with supposing two stories of cells.

In the *under* story, thickness of the walls $2\frac{1}{2}$ feet.

From thence, clear *depth* of each cell from the window to the grating, 13 feet.

From thence to the ends of the *partition walls*, 3 feet more; which gives the length of the *protracted partitions*.

Breadth of the *intermediate area*, 14.

Total from the outside of the building to the *lodge*, $32\frac{1}{2}$ feet.

The double of this, 65 feet, leaves for the *diameter of the lodge*, 35 feet; including the thickness of its walls.

In the *upper* story, the *cells* will be but 9 feet deep; the difference between that and the 13 feet, which is their depth in the under story, being taken up by a *gallery* which surrounds the protracted partitions.

This gallery supplies, in the upper story, the place of an intermediate area on that floor; and by means of *steps*, which I shall come to presently, forms the communication between the upper story of cells to which it is attached, and the lower story of the cells, together with the intermediate area and the lodge.

The spot most remote from the place where the light comes in from, I mean the *centrical* spot of the building and of the lodge, will not be more than 50 feet distant from that place; a distance not greater, I imagine, than what is often times exemplified in churches; even

---

lodge itself would be liable to be kept in a state of constant contamination, in the intervals betwixt one visit and another. This being the case, I can see no other eligible means, than that of having in each cell a fixed provision made for this purpose in the construction of the building.

Betwixt every other two cells, at the end of the partition which divides them, a hollow shaft or tunnel is left in the brick-work of the exterior wall; which tunnel, if there be several stories to the building, is carried up through all of them.

Into this tunnel is inserted, under each cell, the bottom of an EARTHEN PIPE (like those applied in England to the tops of chimneys) glazed in the inside. The upper end, opening into the cell, is covered by a seat of cast-iron, bedded into the brick-work; with an aperture, which neither by its size nor shape shall be capable of admitting the body of a man. To gain the tunnel from the inside of the cell, the position of this pipe will of course be slanting. At the bottom of the tunnel, on the outside of the building, an arched opening, so low as scarcely to be discernible, admits of the filth being carried away. No one, who has been at all attentive to the history of prisons, but must have observed how often escapes have been effected or attempted through this channel.

A slight screen, which the prisoner might occasionally interpose, may perhaps not be thought superfluous. This, while it answers the purpose of decency, might be so adjusted as to prevent his concealing from the eye of the inspector any forbidden enterprise.

For each cell, the whole apparatus would not come to many shillings: a small consideration for a great degree of security. In this manner, without any relaxation of the discipline, the advantages of cleanliness, and its concomitant health, may be attained to as great a degree as in most private houses.

It would be regarded, perhaps, as a luxury too great for an establishment of this kind, were I to venture to propose the addition of a WATER-PIPE all around, with a cock to it in each cell. The clear expense would, however, not be quite so great as it might seem: since by this means a considerable quantity of attendance would be saved. To each prisoner, some allowance of water must necessarily be afforded, if it were only for drink, without regard to cleanliness. To forward that allowance by hand to two or three hundred prisoners in so many different apartments, might perhaps be as much as one man could do, if constantly employed. For the raising the water by pumps to necessary elevation, the labour of the prisoners would suffice.

As to the MATERIALS, brick, as every body knows, would be the cheapest in ***, and either brick or stone, in every other part of England. Thus much as to the shell. But in a building calculated for duration, as this would be, the expense of allowing the same materials to the FLOORS, and laying them upon ARCHES, would, I imagine, not be deemed an unsuitable one; especially when the advantage of a perfect security from fire is taken into the account.

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in such as are not furnished in the manner of this building, with windows in every part of the exterior boundary. But the inspector's *windows* will not be more than about 32½ feet from the open light.

It would be found convenient, I believe, on many accounts, and in most instances, to make *one story* of the *lodge* serve for *two stories* of the *cells;* especially in any situation where ground is valuable, the number of persons to be inspected large, the room necessary for each person not very considerable, and frugality and necessity more attended to than appearance.

For this purpose, the *floor* of the *ground story of the lodge* is elevated to within about 4½ feet of the floor of the *first story* of the *cells.* By this means, the inspector's eye, when he stands up, will be on, or a little above, the level of the floor of the above mentioned upper story of the cells; and, at any rate, he will command both that and the ground story of the cells without difficulty, and without change of posture.

As to the *intermediate area*, the *floor* of it is upon a level, not with the *floor* of the *lodge*, but with that of the *lower story* of the cells. But at the *upper* story of the cells, its place, as I have already mentioned, is supplied by the above-mentioned *gallery;* so that the altitude of this area from the floor to the ceiling is equal to that of both stories of the cells put together.

The floor of the lodge not being on a level with either story of the cells, but between both, it must at convenient intervals be provided with flights of *steps*, to go *down* to the ground story of the cells by the intermediate area, and *up* to the first floor of the cells by the gallery. The ascending flights, joined to the *descending*, enable the servants of the house to go to the upper story of the cells, without passing through the apartment of the inspector.

As to the *height* of the whole, and of the several parts, it is supposed that 18 feet might serve for *the two stories of cells*, to be inspected, as above, by *one story* of the *lodge*. This would hold 96 persons.

36 feet for four stories of *cells*, and two of the lodge: this would hold 192 persons.

54 feet for six stories of the cells, and three of the lodge: this would hold 288 persons.

And 54 feet, it is conceived, would not be an immoderate elevation.

The drawings which, I believe, will accompany this, suppose *four* for the number of stories of the cells.

You will see, under the head of hospitals, the reasons why I conceive that even a less height than 9 feet, deducting the thickness of a floor supported by arches, might be sufficient for the cells.

The *passage* might have, for its *height*, either the height of one story, or of two stories of the cells, according as the number of those cells was two or four. The part over the passage might, in either case, be added to the lodge, to which it would thereby give a communication, at each end, with the world without doors, and ensure a keeper against the danger of finding himself a prisoner among his prisoners.

Should it be thought, that, in this way, the lodge would not have light enough, for the convenience of a man of a station competent to the office, the deficiency might be supplied by a void space left in that part, all the way up. You may call it if you please the *central area*. Into this space windows may open where they are wanted, from the apartments of the lodge. It may be either left *open* at the top, or covered with a *sky-light*. But this expedient, though it might add, in some respects, to the convenience of the lodge, could not but add considerably to the quantity and expense of the building.

On the other hand, it would be assistant to ventilation. Here, too, would be a proper place for the *chapel:* the prisoners remaining in their cells, and the windows of the lodge, which is almost all window, being thrown open. The advantages derivable from it in point of light and ventilation depending upon its being kept vacant, it can never be wanted for any profane use. It may therefore, with the greater propriety, be allotted to divine service, and receive a regular consecration. The *pulpit* and *sounding-board* may be moveable. During the term of service, the sky-light, at all other times kept as open as possible, might be shut.

LETTER IV.

THE PRINCIPLE EXTENDED TO UNCOVERED AREAS.

IN my two last letters, I gave you such idea as it was in my power to give you by words, of this new plan of construction, considered in its most *simple* form. A few more with regard to what further *extensions* it may admit of.

The utmost number of persons that could be stowed in a single building of this sort, consistently with the purposes of each several institution, being ascertained, to increase the number, that of the buildings must of course be increased. Suppose *two* of these *rotundas* requisite: these two might, *by a covered gallery* constructed upon the same principles, be consolidated into one inspection-house. And by the help of such a covered gallery, *the field of inspection* might be dilated to any extent.

If the number of rotundas were extended to *four*, a regular uncovered area might in

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that way be inclosed; and being surrounded by covered galleries, would be commanded in this manner from all sides, instead of being commanded only from one.

The area thus inclosed might be either *circular* like the buildings, or *square*, or *oblong*, as one or other of those forms were best adapted to the prevailing ideas of beauty or local convenience. A chain of any length, composed of inspection-houses adapted to the same or different purposes, might in this way be carried round an area of any extent.

On such a plan, either one inspector might serve for two or more rotundas, or if there were one to each, *the inspective force*, if I may use the expression, would be greater in such a compound building, than in any of the number singly taken, of which it was composed; since each inspector might be relieved occasionally by every other.

In the uncovered area thus brought within the field of inspection, out-door employments, or any employments requiring a greater covered space than the general form of construction will allow, might be carried on upon the same principle. A kitchen-garden might then be cultivated for the use of the whole society, by a few members of it at a time, to whom such an opportunity of airing and exercising themselves would be a refreshment and indulgence.

Many writers have expatiated with great force and justice, on the unpopular and unedifying cast of that undistinguishing discipline, which, in situation and treatment, confounds the lot of those who *may* prove innocent, with the lot of those who *have been* proved to be guilty. The same roof, it has been said, ought not to inclose persons who stand in predicaments so dissimilar. In a combination of inspection-houses, this delicacy might be observed without any abatement of that vigilance with regard to safe custody, which in both cases is equally indispensable.

LETTER V.

ESSENTIAL POINTS OF THE PLAN.

It may be of use, that among all the particulars you have seen, it should be clearly understood what circumstances are, and what are not, essential to the plan. The essence of it consists, then, in the *centrality* of the inspector's situation, combined with the well-known and most effectual contrivances for *seeing without being seen*. As to the *general form* of the building, the most commodious for most purposes seems to be the circular: but this is not an absolutely essential circumstance. Of all figures, however, this, you will observe, is the only one that affords a perfect view, and the same view, of an indefinite number of apartments of the same dimensions: that affords a spot from which, without any change of situation, a man may survey, in the same perfection, the whole number, and without so much as a change of posture, the half of the whole number, at the same time: that, within a boundary of a given extent, contains the greatest quantity of room:—that places the centre at the least distance from the light:—that gives the cells most width, at the part where, on account of the light, most light may, for the purposes of work, be wanted:—and that reduces to the greatest possible shortness the path taken by the inspector, in passing from each part of the field of inspection to every other.

You will please to observe, that though perhaps it is the most important point, that the persons to be inspected should always feel themselves as if under inspection, at least as standing a great chance of being so, yet it is not by any means the *only* one. If it were, the same advantage might be given to buildings of almost any form. What is also of importance is, that for the greatest proportion of time possible, each man should actually *be* under inspection. This is material in *all* cases, that the inspector may have the satisfaction of knowing, that the discipline actually has the effect which it is designed to have: and it is more particularly material in such cases where the inspector, besides seeing that they conform to such standing rules as are prescribed, has more or less frequent occasion to give them such transient and incidental directions as will require to be given and enforced, at the commencement at least of every course of industry. And I think, it needs not much argument to prove, that the business of inspection, like every other, will be performed to a greater degree of perfection, the less trouble the performance of it requires.

Not only so, but the greater chance there is, of a given person's being at a given time actually under inspection, the more strong will be the persuasion—the more *intense*, if I may say so, the *feeling*, he has of his being so. How little turn soever the greater number of persons so circumstanced may be supposed to have for calculation, some rough sort of calculation can scarcely, under such circumstances, avoid forcing itself upon the rudest mind. Experiment, venturing first upon slight trangressions, and so on, in proportion to success, upon more and more considerable ones, will not fail to teach him the difference between a loose inspection and a strict one.

It is for these reasons, that I cannot help looking upon every form as less and less eligible, in proportion as it deviates from the *circular*.

A very material point is, that room be

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allotted to the lodge, sufficient to adapt it to the purpose of a complete and constant habitation for the principal inspector or head-keeper, and his family. The more numerous also the family, the better; since, by this means, there will in fact be as many inspectors, as the family consists of persons, though only one be paid for it. Neither the orders of the inspector himself, nor any interest which they may feel, or not feel, in the regular performance of his duty, would be requisite to find them motives adequate to the purpose. Secluded oftentimes, by their situation, from every other object, they will naturally, and in a manner unavoidably, give their eyes a direction conformable to that purpose, in every momentary interval of their ordinary occupations. It will supply in their instance the place of that great and constant fund of entertainment to the sedentary and vacant in towns—the looking out of the window. The scene, though a confined, would be a very various, and therefore, perhaps, not altogether an unamusing one.

LETTER VI.

ADVANTAGES OF THE PLAN.

I FLATTER myself there can now be little doubt of the plan's possessing the fundamental advantages I have been attributing to it: I mean, the *apparent omnipresence* of the inspector (if divines will allow me the expression,) combined with the extreme facility of his *real presence*.

A collateral advantage it possesses, and on the score of frugality a very material one, is that which respects the *number* of the inspectors requisite. If this plan required more than another, the additional number would form an objection, which, were the difference to a certain degree considerable, might rise so high as to be conclusive: so far from it, that a greater multitude than ever were yet lodged in one house might be inspected by a single person; for the trouble of inspection is diminished in no less proportion than the strictness of inspection is increased.

Another very important advantage, whatever purposes the plan may be applied to, particularly where it is applied to the severest and most coercive purposes, is, that the *under* keepers or inspectors, the servants and subordinates of every kind, will be under the same irresistible controul with respect to the *head* keeper or inspector, as the prisoners or other persons to be governed are with respect to *them*. On the common plans, what means, what possibility, has the prisoner, of appealing to the humanity of the principal for redress against the neglect or oppression of subordinates in that rigid sphere, but the *few* opportunities which, in a crowded prison, the most conscientious keeper *can* afford—but the none at all which many a keeper *thinks* fit to give them? How different would their lot be upon this plan!

In no instance could his subordinates either perform or depart from their duty, but he must know the time and degree and manner of their doing so. It presents an answer, and that a satisfactory one, to one of the most puzzling of political questions—*quis custodiet ipsos custodes?* And, as the fulfilling of his, as well as their, duty would be rendered so much easier, than it can ever have been hitherto, so might, and so should, any departure from it be punished with the more inflexible severity. It is this circumstance that renders the influence of this plan not less beneficial to what is called *liberty*, than to necessary coercion; not less powerful as a controul upon subordinate power, than as a curb to delinquency; as a shield to innocence, than as a scourge to guilt.

Another advantage, still operating to the same ends, is the great load of trouble and disgust which it takes off the shoulders of those occasional inspectors of a higher order, such as *judges* and other *magistrates*, who, called down to this irksome task from the superior ranks of life, cannot but feel a proportionable repugnance to the discharge of it. Think how it is with them upon the present plans, and how it still must be upon the best plans that have been hitherto devised! The cells or apartments, however constructed, must, if there be nine hundred of them (as there were to have been upon the penitentiary-house plan,) be opened to the visitors, one by one. To do their business to any purpose, they must approach near to, and come almost in contact with each inhabitant; whose situation being watched over according to no other than the loose methods of inspection at present practicable, will on that account require the more minute and troublesome investigation on the part of these occasional superintendents. By this new plan, the disgust is entirely removed, and the trouble of going into such a room as the lodge, is no more than the trouble of going into any other.

Were *Newgate* upon this plan, all Newgate might be inspected by a quarter of an hour's visit to Mr. Akerman.

Among the other causes of that reluctance, none at present so forcible, none so unhappily well grounded, none which affords so natural an excuse, nor so strong a reason against accepting of any excuse, as the danger of *infection*—a circumstance which carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, involving in one common catastrophe the violator and the upholder of the laws. But in a spot so constructed, and under a

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course of discipline so insured, how should infection ever arise? or how should it continue? Against every danger of this kind, what private house of the poor, one might almost say, or even of the most opulent, can be equally secure?

Nor is the disagreeableness of the task of superintendence diminished by this plan, in a much greater degree than the efficacy of it is increased. On all others, be the superintendent's visit ever so unexpected, and his motions ever so quick, time there must always be for preparations blinding the real state of things. Out of nine hundred cells, he can visit but one at a time, and, in the meanwhile, the worst of the others may be arranged, and the inhabitants threatened, and tutored how to receive him. On this plan, no sooner is the superintendent announced, than the whole scene opens instantaneously to his view.

In mentioning inspectors and superintendents who are such by office, I must not overlook that system of inspection, which, however little heeded, will not be the less useful and efficacious: I mean, the part which individuals may be disposed to take in the business, without intending, perhaps, or even without thinking of, any other effects of their visits, than the gratification of their own particular curiosity. What the inspector's or keeper's family are with respect to *him*, that, and more, will these spontaneous visitors be to the superintendent, — assistants, deputies, in so far as he is faithful, witnesses and judges, should he ever be unfaithful, to his trust. So as they are but there, what the motives were that drew them thither is perfectly immaterial; whether the relieving of their anxieties by the affecting prospect of their respective friends and relatives thus detained in durance, or merely the satisfying that general curiosity, which an establishment, on various accounts so interesting to human feelings, may naturally be expected to excite.

You see, I take for granted as a matter of course, that under the necessary regulations for preventing interruption and disturbance, the doors of these establishments will be, as, without very special reasons to the contrary, the doors of all public establishments ought to be, thrown wide open to the body of the curious at large — the great *open committee* of the tribunal of the world. And who ever objects to such publicity, where it is practicable, but those whose motives for objection afford the strongest reasons for it?

LETTER VII.

PENITENTIARY-HOUSES—SAFE CUSTODY.

DECOMPOSING the plan, I will now take the liberty of offering a few separate considerations, applicable to the different purposes to which it appears capable of being applied.

A *Penitentiary-house*, more particularly is (I am sorry I must correct myself, and say, was to have been) what every prison might, and in some degree at least ought to be, designed at once as a place of *safe custody*, and a place of *labour*. Every such place must necessarily be, whether designed or not, an *hospital* — a place where sickness will be found at least, whether provision be or be not made for its relief. I will consider this plan in its application to these three distinguishable purposes.

Against *escapes*, and in particular on the part of felons of every description, as well before as after conviction, persons from the desperateness of whose situation attempts to escape are more particularly to be apprehended, it would afford, as I dare say you see already, a degree of security, which, perhaps, has been scarce hitherto reached by conception, much less by practice. Overpowering the guard requires an union of hands, and a concert among minds. But what union, or what concert, can there be among persons, no one of whom will have set eyes on any other from the first moment of his entrance? Undermining walls, forcing iron bars, requires commonly a concert, always a length of time exempt from interruption. But who would think of beginning a work of hours and days, without any tolerable prospect of making so much as the first motion towards it unobserved? Such attempts have been seldom made without the assistance of implements introduced by accomplices from without. But who would expose themselves even to the slightest punishment, or even to the mortification of the disappointment, without so much as a tolerable chance of escaping instantaneous detection? — Who would think of bringing in before the keeper's face, so much as a small file, or a phial of *aqua fortis*, to a person not prepared to receive any such thing, nor in a condition to make use of it?* Upon all plans hitherto pursued, the thickest walls have been found occasionally unavailing: upon this plan, the thinnest would be sufficient — a circumstance which must operate, in a striking degree, towards a diminution of the expense.

In this, as in every other application of the

* Should such strictness be thought requisite, visitors, if admitted into the intermediate area, might be precluded by a rail, from approaching nearer than to a certain distance from the cells; and, in some cases, all conversation between them and the prisoners might be interdicted altogether. The propriety of such a regulation may be thought to stand upon a different footing, according as the confinement were previous or subsequent to conviction, and according to the nature of the offence, and the intended severity of the punishment.

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plan, you will find its lenient, not less conspicuous than its coercive, tendency; insomuch that, if you were to be asked who had most cause to wish for its adoption, you might find yourself at some loss to determine between the malefactors themselves, and those for whose sake they are consigned to punishment.

In this view I am sure you cannot overlook the effect which it would have in rendering unnecessary that inexhaustible fund of disproportionate, too often needless, and always unpopular severity, not to say torture—the use of *irons*. Confined in one of these cells, every motion of the limbs, and every muscle of the face exposed to view, what pretence could there be for exposing to this hardship the most boisterous malefactor? Indulged with perfect liberty within the space allotted to him, in what worse way could he vent his rage, than by beating his head against the walls? and who but himself would be a sufferer by such folly? Noise, the only offence by which a man thus engaged could render himself troublesome (an offence, by the bye, against which irons themselves afford no security,) might, if found otherwise incorrigible, be subdued by *gagging*—a most natural and efficacious mode of prevention, as well as punishment, the prospect of which would probably be for ever sufficient to render the infliction of it unnecessary. Punishment, even in its most hideous forms, loses its odious character, when bereft of that *uncertainty*, without which the rashest desperado would not expose himself to its stroke. If an instance be wanted, think what the means are, which the so much admired law of England makes use of, and that in one of its most admired branches, to work, not upon criminals, but upon its favourite class of judges? what but death? and that no common death, but death the slow but necessary result of lingering torture. And yet, whatever other reproach the law may be thought to merit, in what instance was it ever seen to expose itself in this way to the reproach of cruelty?

LETTER VIII.

USES—PENITENTIARY-HOUSES—REFORMATION.

IN my last, I endeavoured to state to you the advantages which a receptacle, upon the plan of the proposed building, seemed to promise in its application to places of *confinement*, considered merely in that view. Give me leave now to consider it as applicable to the joint purposes of *punishment*, *reformation*, and *pecuniary economy*.

That in regard to persons of the description of those to whom punishments of the nature in question are destined, solitude is in its nature subservient to the purpose of reformation, seems to be as little disputed, as its tendency to operate in addition to the mass of sufferance. But that upon this plan that purpose would be effected, at least as completely as it could be on any other, you cannot but see at the first glance, or rather you must have observed already. In the condition of *our* prisoners (for so I will call them for shortness sake) you may see the student's paradox, *nunquam minus solus quam cum solus*, realized in a new way: to the keeper, a *multitude*, though not a *crowd*; to themselves, they are *solitary* and *sequestered* individuals.

What is more, you will see this purpose answered more completely by this plan, than it could possibly be on any other. What degree of solitude it was proposed to reduce them to in the once-intended penitentiary-houses, need not be considered. But for one purpose, in buildings of any mode of construction that could then and there have been in view, it would have been necessary, according to the express regulations of that plan, that the law of solitude should be dispensed with; I mean, so often as the prisoners were to receive the benefits of attendance on Divine service. But in my brother's circular penitentiary-houses, they might receive these benefits, in every circumstance, without stirring from their cells. No thronging nor jostling in the way between the scene of work and the scene destined to devotion; no quarrellings, nor confederatings, nor plottings to escape; nor yet any whips or fetters to prevent it.

LETTER IX.

PENITENTIARY-HOUSES—ECONOMY—CONTRACT—PLAN.

I AM come now to the article of *pecuniary economy*; and as this is the great rock upon which the original penitentiary-plan I understand has split, I cannot resist the temptation of throwing out a few hints relative to the mode of management, which I look upon as the most eligible in this view; but which could not, as you will see, have been established with anything like the advantage, upon any other ground than that of my brother's inspection principle.

To come to the point at once, I would do the whole by *contract*. I would farm out the profits, the no-profits, or if you please the losses, to him who, being in other respects unexceptionable, offered the best terms. Undertaking an enterprise new in its extent, in the description of the persons to be subjected to his management, and in many other circumstances, his success in it, if he does succeed, may be regarded in the light of an invention, and rewarded accordingly, just as

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success in other inventions is rewarded, by the profit which a monopoly secured by patent enables a man to make; and that in proportion to the success which constitutes their merit. He should have it during *good behaviour;* which you know is as much as to say, unless specific instances of misbehaviour, flagrant enough to render his removal expedient, be proved on him in a legal way, he shall have it for his *life*. Besides that when thus secured he can afford to give the better price for his bargain, you will presently see more material reasons to counterbalance the seeming unthriftiness of granting him a term, which may prove so long a one. In other respects, the terms of the contract must, of course, depend upon the proportion of capital, of which the contract gave him the use. Supposing the advance to amount to the whole manufacturing stock, he must of course either pay something for his contract, or be contented with a *share* of the gross profits, instead of the whole, unless that from such profits an interest upon the capital so advanced to him should be deducted: in which case, nobody, I suppose, would grudge him the whole net profit after such deduction, even though the rate of interest were much below the ordinary one: the difference between such reduced rate of interest and the ordinary one, would constitute the whole of the expense which the public would be at. Suppose, to speak at random, this expense were to amount to £6000, £8000, or £10,000 a-year, for the 3000 convicts which, it was computed, would be the standing number to be maintained in England,* I should not imagine that such a sum as even this latter would be much grudged. I fancy the intended expedition to Botany Bay, of which I am just apprized, will be rather more expensive. Not that it appears to me that the nation would remain saddled with any such expense as this at the long run, or indeed with any part of it. But of this hereafter.

In the next place, I would give my contractor all the *powers* that his interest could prompt him to wish for, in order to enable him to make the most of his bargain, with only some slight reservations, which I will mention afterwards; for very slight ones you will find they will be, that can be needful or even serviceable in the view of preventing abuse.

But the greater latitude he has in taking such measures, the less will he grudge the letting it be known what the measures are which he *does* take, knowing, at the same time, that no advantage can be taken of such knowledge, by turning him out in case of his success, and putting in another to reap the fruits of his contrivance. I will then require him to *disclose*, and even to print and *publish* his accounts — the whole process and detail of his management — the whole history of the prison. I will require him, I say, on pain of forfeiture or other adequate punishment, to publish these accounts, and that upon oath. I have no fear of his not publishing *some* accounts, because, if the time is elapsed and some accounts not published—a fact not liable to dispute — the punishment takes place of course: and I have not much fear that the accounts, when published, will not be *true;* because, having power to do every thing that is for his advantage, there is nothing which it is his interest to conceal; and the interest which the punishment for perjury gives him not to conceal, is manifest, more especially as I make him examinable and cross-examinable *viva voce* upon oath at any time.

It is for clearing away as much as possible every motive of pecuniary interest that could prompt him to throw any kind of cloak or reserve upon any of his expedients for increasing his profits, that I would insure them to him for *life*.

From the information thus got from him, I derive this advantage. In the case of his *ill* success, I see the causes of it, and not only I, but every body else that pleases, may see the causes of it; and amongst the rest, those who, in case of their taking the management out of his hands, would have an interest in being acquainted with such causes, in order to obviate or avoid them. More than that, if his ill success is owing to incapacity, and that incapacity such as, if continued, might raise my expense above the calculation, I can make him stop in time—a measure to which he can have as little objection as myself; for it is one advantage of this plan, that whatever mischief happens must have more than eaten out all *his* profits before it reaches *me*.

In the case of his good success, I see the causes of that too; and every body sees them, as before; and, amongst others, all persons who could propose to themselves to get into a situation similar to his, and who in such case would naturally promise themselves, in the event of their getting into his situation, a success equal to his — or rather superior; for such is the presumption and vanity natural to man.

Without such publication, whom should I have to deal with, besides him? certainly, in comparison, but a very few; not many more than I may have had at first: the terms, of course, disadvantageous as at first; for disadvantageous terms at first, while all is yet in darkness, they certainly must be.

After such publication, whom should I have then? I should have every body; every body who, by fortune, experience, judgment,

* According to the hard-labour bill, 2865. See the table to my View of that bill: since then, I fear, the number has rather increased than diminished.

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disposition, should conceive himself able, and find himself inclined, to engage in such a business; and each person seeing what advantage had been made, and how, would be willing to make his offer in proportion. What situation more favourable for making the best terms?

These best terms, then, I should make at his death, even for his establishment; but long before that, had I others upon the carpet, I should make similar good terms for all those others. Thus I make his advantage mine, not only after it has ceased to be his, but almost as soon as it commences so to be: I thus get his success in all the rest, by paying for it only in the one; and in that not more than it was necessary to pay for it.

But *contractors*, you will say perhaps, or at least if you don't, there are enough that will, "*are a good-for-nothing set of people; and why should we be fleeced by them? One of them perjured himself not long ago, and we put him into the pillory. They are the same sort of gentry that are called farmers-general in France, and publicans in the Gospel, where they are ranked with sinners; and nobody likes them anywhere.*" All this, to be sure, is very true: but if you put one of them into the *pillory*, you put another of them into the *post-office;* and if in the devoted city five righteous would have screened the whole gang from the perdition called for by the enormities of ninety-five unrighteous, why should not the merits of one Palmer be enough to make it up for the demerits of twenty Atkinsons? Gentlemen in general, as I have had manifold occasion to observe, love close reasoning, and here they have it. It might be thought straying from the point, if I ventured to add, that gentlemen in the corn trade, or in any other trade, have not commonly quite so many witnesses to *their bargains*, as my contractor would have to the management of *his* house.

LETTER X.

CHOICE OF TRADES SHOULD BE FREE.

IN my last I troubled you with my sentiments on the duration of the first contract, and the great article of *publicity* in the management, which was my motive for admitting of a duration so unlimited. But long before my contractor and I had come to any settlement about these points, he would have found various questions to propose to me. One thing he would not fail to say to me is—*What trades may I put my men to when I have got them?* My answer is soon given. *Any whatever that you can persuade them to turn their hands to.* Now, then, Sir, let us think for a moment, if you please, what trades it may be most for his *advantage* to put them to, and what it is therefore *most likely* he should be disposed to put them to.

That he may get the better view of them, I throw them into *four* classes. In the *first*, I place those who already are possessed of businesses capable of being carried on with advantage in the prison: in the *second*, those trained up to businesses which, though not capable in themselves of being carried on within such limits, yet by the similarity of operation have a tendency to render it more or less easy for a man to learn some of those other businesses which *are:* in the *third* rank, I would place such as had been trained up indeed to industry, but to branches which have no such tendency as I have just mentioned; such, for instance, as porters, coal-heavers, gardeners, and husbandmen. In the last I would place men regularly brought up to the profession of thieving, and others who have never been brought up to any kind of industry. Some names for these different classes I may as well endeavour to find as not; for names they must have when they get into their house; and if I perform not that business myself, somebody else must do it for me. I will call them the *good* hands, the *capable* hands, the *promising* hands, and the *drones*. As to the *capable* hands, they will, of course, be the more valuable, the nearer the businesses they understand approach to those of the *good* ones; in other words, the less difficulty there would be in teaching the latter the business of the former. The same observation of course applies to the *promising* hands; in as far as the advantage which the one possess by habit the others may appear to possess by disposition. Lower down in the scale of detail I will not attempt to lead you.

You have a very pretty law in England for enriching the country, by keeping boys backward, and preventing men from following the trades they could get most by. If I were jealous of Russia's growing too rich, and being able to buy too many of our goods, I would try to get such a law as that introduced among these stupid people here, who have never yet had the sense to think of any such thing. Having no such jealousy against any country, much less against my own Utopia, I would beg that law might be banished from within my walls. I fancy my contractor would be as well pleased with its room as its company; and as the same indulgence has been granted to other persons of whose industry no great jealousy seems to be entertained, such as soldiers and sailors, I have no great fear the indulgence would be denied me. Much I believe is not apprehended in that way from the red-coats and jack-tars; and still less, I believe, would be apprehended from my heroes.

This stumbling-block cleared away, the

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first thing I imagine my contractor would do, would be to set to work his *good* hands; to whom he would add as many of his *capable* hands as he could muster.

With his *promising* hands and his *drones*, he would set up a manufacture. What, then, shall this manufacture be? *It may be this, and that, and t'other thing*, says the hard-labour bill: *it shall be anything or everything*, say I.

As to the question, *What sort of manufacture or manufacturer would be likely to answer best?* it is a discussion I will not attempt to lead you into, for I do not propose at present to entertain you with a critical examination of the several actual and possible manufactures, established and establishable in Great Britain. The case, I imagine, would be, that some manufacturer or other would be the man I should have for my contractor—a man who, being engaged in some sort of business that was easy to learn, and doing pretty well with as many hands as he was able to get upon the ordinary terms, might hope to do better still with a greater number, whom he could get upon much better terms. Now, whether there are any such manufacturers, and how many, is what I cannot so well tell you, especially at this distance; but, if you think it worth while to ask Mr. Daily Advertiser, or Mr. St. James' Chronicle, I fancy it will not be long before you get some answer.

In my *View of the Hard-Labour Bill*, I ventured to throw out a hint upon the subject of putting the good hands to their own trades. Whether any and what use was made of that hint, I cannot recollect; for neither the act which passed afterwards, nor any chapter of that history, has travelled with me to *Crecheff;* nor should I have had a single scrap of paper to refresh my memory on that subject, but for the copy of my own pamphlet which I found on my brother's shelf. The general notion seemed to be, that as the people were to be made to work for their punishment, the works to be given to them should be somewhat which they would not like; and, in that respect, it looks as if the consideration of punishment, with its appendage of reformation, had kept the other of economy a little behind the curtain. But I neither see the great danger nor the great harm of a man's liking his work too well; and how well soever he might have liked it *elsewhere*, I should still less apprehend his liking the thought of having it to do *there*. Supposing no sage regulations made by any body to nail them to this or that sort of work, the work they would naturally fall upon under the hands of a contractor would be that, whatever it might be, by which there was most money to be made; for the more the prisoner-workman got, the more the master could get out of him; so that upon that point I should have little fear of their not agreeing. Nor do I see why labour should be the less *reforming* for being profitable. On the contrary, among working men, especially among working men whom the discipline of the house would so effectually keep from all kinds of mischief, I must confess I know of no test of reformation so plain or so sure as the improved quantity and value of their work.

It looks, however, as if the authors of the above provision had not quite so much faith in such an arrangement as I must confess I have. For the choice of the trade was not to be left to the governor of the prison, much less to the prisoner-workman, but was given to *superintending committees of justices of the peace*. In choosing among the employments exemplified, and other similar ones (for if I mistake not this restriction of similarity was subjoined) it was indeed recommended to those magistrates to take "such employments as they should deem most conducive to profit." But the profit here declared to be in view was, not the profit of the *workman* or his master the *governor*, but I know not what profit "of the *district*," the "convenience" of which (though I know not what convenience there could be, distinct from profit) was another land-mark given them to steer by. If you cast an eye on the trades exemplified (as I believe I must beg you to do presently) you will find some difficulty, I believe, in conceiving that in the choice of them the article of profit could have been the uppermost consideration. Nor was this all; for besides the vesting of the choice of the employments in committees of justices in the first instance, the same magistrates are called upon to exercise their judgment and ingenuity in dividing the prisoners into classes; in such sort, that the longer a man had stayed in the house his labour should be less and less "severe," exception made for delinquency, in which case a man might at any time be turned down from an upper class to a lower. But had the matter been left to a contractor and his prisoner-workmen, they would have been pretty sure to pitch upon, and to stick to, what would be most conducive to *their* profit, and by *that* means to the profit of the district; and that without any recommendation. Whether the effect of that recommendation would have been equally sure upon the above-mentioned magistrates, would have remained to be decided by experience. Understanding me to be speaking merely of a magistrate in the abstract, you will forgive my saying, that in this one point I have not quite so great a confidence in a set of gentlemen of that description, as I have in that sort of knave called a contractor. I see no sort of danger, that to the contractor there should be any one object upon earth dearer than the interest of the contractor; but I see some

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danger that there may be, now and then by accident, some other object rather dearer to the magistrate. Among these rival objects, if we do not always reckon the pleasure of plaguing the contractor, should he and the magistrate chance not to agree, we may however not unfrequently reckon the exercise of his (the magistrate's) own power, and the display of his own wisdom; the former of which, he may naturally enough conceive, was not given to him for nothing, nor the latter confided in without cause. You must, I think, before now have met with examples of men, that had rather a plan of the public's, or even of an individual's for whom they had a more particular regard, should miscarry under their management, than prosper under a different one.

But if, without troubling yourself about general theories of human nature, you have a mind for a more palpable test of the propriety of this reasoning, you may cut the matter short enough, by making an experiment upon a contractor, and trying whether he will give you as good terms with these clogs about him, as he would without them. Sure I am, that, were I in his place, I should require no small abatement to be made to me, if, instead of choosing the employments for my own men, I was liable at every turn to have them taken out of my hands and put to different employments, by A, B, and C to-day, and by X, Y, and Z to-morrow.

Upon the whole, you will not wonder that I should have my doubts at present, whether the plan was rendered much better for these ingenious but complicated refinements. They seemed mighty fine to me at the time, for when I saw contrivance, I expected success proportionable.

LETTER XI.

MULTIPLICATION OF TRADES IS NOT NECESSARY.

So far as to the *choice* of businesses: As to the new ones, I see no reason why any point should be made of *multiplying* them: a single one, well chosen, may answer the purpose, just as well as ever so many more. I mention this, because though it may be easy to find one species of manufacture, or five, or ten, that might answer with workmen so cramped, and in a situation so confined, it might not be quite so easy to find fifty or a hundred. The number of hands for which employment is to be found, can scarcely be admitted as a reason for multiplying the subjects of manufacture. In such a nation as Great Britain, it is difficult to conceive that the greatest number of hands that can be comprised in such an establishment, should be great enough to overstock the market; and if this island of ours is not big enough, this globe of ours is still bigger. In many species of manufacture, the work is performed with more and more advantage, as every body knows, the more it can be divided; and, in many instances, what sets bounds to that division, is rather the number of hands the master can afford to maintain, than any other circumstance.

When one turns to the hard-labour bill, it looks as if the framers of it had been under some anxiety to find out businesses that they thought might do in their penitentiary-houses, and to make known the result of their discoveries. It accordingly proposes for consideration a variety of examples. For such of the prisoners as were to be worked the hardest: 1. treading in a wheel; 2. drawing in a capstern for turning a mill or other machine or engine; 3. beating hemp; 4. rasping logwood; 5. chopping rags; 6. sawing timber; 7. working at forges; 8. smelting. For those who are to be most favoured: 1. making ropes; 2. weaving sacks; 3. spinning yarn; 4. knitting nets.

I find some difficulty, however, in conceiving to what use this instruction was destined, unless it were the edification of that class of legislators, more frequently quoted for worth than knowledge—the country gentlemen. To some gentlemen of that respectable description, it might, for aught I know, be matter of consolation to see that industry could find so many shapes to assume, on such a stage. But if it was designed to give a general view of the purposes to which manual labour may be applied, it goes not very far, and there are publications enough that go some hundreds of times farther. If the former of its two chapters was designed as a specimen of such works of a particularly laborious cast, as are capable of being carried on to the greatest advantage, or with least advance of capital, or with the greatest security, against workmen of so refractory a complexion—or if either chapter was destined as a specimen of employments that required least extent of room—in any of these cases the specimen seems not a very happy one:—1*st* and 2*d*, Of the *treading in a wheel*, or *drawing in a capstern for turning a mill*, nothing can be said in respect of pecuniary productiveness, till the mill, the machine, or the engine, are specified; nor anything that can be found to distinguish them from other employments, except the room and the expense which such implements seem more particularly to require. 3*d*, *Beating of hemp* is a business too proverbial to be unknown to any body, and in those establishments where it has had compulsion for its motive, has not hitherto, I believe, proved a very profitable one; and if I may believe people who are of the trade, and who have no interest to mislead me,

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hemp beaten by hand, though it takes more labour, does not fetch so good a price, as when beaten at a water-mill. *4th, Rasping logwood* is an employment which is said by Mr. Howard, I think, and others, to be carried on in some work-houses of Holland, and I believe to some profit. But I know it has been carried on likewise by the natural *primum mobiles;* witness a wind-mill, which, I remember, a tenant of yours employed in this way; and I can conceive few operations in which those natural powers promise to have greater advantage over the human. *5th, Chopping rags* is a business that can answer no other purpose than the supplying materials for paper-mills, which cannot anywhere be established without a supply of *running-water*—an element which, I am sure in many, and, I am apt to think, in all paper-mills hitherto established, affords for this operation a *primum mobile* much more advantageous than human labour. In the *6th, 7th,* and *8th* examples, viz. *sawing timber, working at forges,* and *smelting,* I see nothing to distinguish them very remarkably from three hundred others that might be mentioned, unless it be the great room they all of them occupy, the great and expensive establishment which they suppose, or the dangerous weapons which they put into the hands of any workman who may be disposed to turn that property to account. *9th,* As to *rope making,* which stands at the head of the less laborious class, besides being, as I always understood, remarkably otherwise, it has the particular property of taking up more room than, I believe, any other manufacturing employment that was ever thought of. As to the three last articles of the dozen, viz. *weaving sacks, spinning yarn, and knitting nets,* I know of no particular objections that can be made to them, any more than to three score others. But, without going a stone's throw from the table I am writing upon, I could find more than as many businesses, which pay better in England, than these three last, in other respects exceptionable ones, which are as easy to learn, take up as little room, and require a capital nearly, or quite as moderate, to set up. By coming here, if I have learnt nothing else, I have learnt what the human powers are capable of, when unfettered by the arbitrary regulations of an unenlightened age; and gentlemen may say what they please, but they shall never persuade me that in England those powers are in any remarkable degree inferior to what they are in Russia.* However, not having the mantle of legislation to screen me from the ridicule of going beyond my last, I forbear to specify even what I have under my eye, knowing that in Mr. Arthur Young, a gentleman whom no one can accuse of hiding his candle under a bushel, anybody that chooses it might find an informant, who, on this, as well as so many other important subjects, for every grain of information I could give, could give a thousand.

But without any disparagement to that gentleman, for whose public-spirited labours and well-directed talents no man feels greater respect than I do, there are other persons, who on these same subjects could, for such a purpose, give still more and better information than he, and who would not be less communicative: I mean, as before, Mr. Daily Advertiser and his brethren.

There are two points in politics very hard to compass. One is, to persuade legislators that they do not understand shoemaking better than shoemakers; the other is, to persuade shoemakers that they do not understand legislating better than legislators. The latter point is particularly difficult in our own dear country; but the other is the hardest of all hard things everywhere.

LETTER XII.

CONTRACTOR'S CHECKS.

THE point, then, being settled, what trades the people may be employed in, another question my contractor will ask is, what *powers* he is to have put into his hands, as a means of persuading them to betake themselves to those trades? The shortest way of answering this question will be to tell him what powers he shall *not* have. In the first place then, he shall not starve them. "What then," you will say perhaps, "do you think it likely that he would?" To speak the truth, for my own part I have no great fear of it. But others perhaps might. Besides, my notion is, that the law, in guarding itself against men, ought to do just the contrary of what the judge should do in trying them, especially where there is nothing to be lost by it. The business, you know, of the judge, is to presume them all honest till he is forced to suspect the contrary: the business of the law is to conclude them all, without exception, to be the greatest knaves and villains that can be imagined. My contractor, therefore, I make myself sure, would starve them—a good many of them at least—if he were let alone. He would starve, of course, all whom he could not make pay for their board, together with something for his trouble. But as I should get nothing by this economy, and might lose some credit by it, I have no mind it should take place. Bread, though as bad as wholesome bread can be, they shall have,

* One of my brother's boys, who had not been at nail-making a month, got flogged the other day for making a knife: not that at Crecheff there is any law against ingenuity; but there is against stealing iron and stealing time.

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then, in plenty: this and water, and nothing else. This they shall be certain of having, and, what is of full as much consequence, every body else that pleases shall be certain of their having it. My brethren of the would-be-reforming tribe may go and look at it at the baker's: they may weigh it, if they will, and buy it, and carry it home, and give it to their children or their pigs. It shall be dealt out by sound of trumpet, if you please; and Christian starers may amuse themselves with seeing bad bread dealt out to felons, as Christian ambassadors are entertained with the sight of bags of bad money counted out to Janissaries. The latter wonder I saw: the other I assure you would give me much more pleasure.

With this saving clause, I deliver them over to the extortioner, and let him make the most of them. Let him sell porter at the price of port: and "humble port" at the price of "imperial tokay:" his customers might grumble, but I don't think you would, and I am sure I should not: for it is for that they were put there. Never fear his being so much his own enemy, as to stand out for a price which nobody will give.

In the next place I don't know that I should be for allowing him the power of beating his boarders, nor, in short, of punishing them in any shape. Anywhere else, such an exemption must have been visionary and impracticable. Without either punishment, or interest given him in the profits of his labour—an interest which, to get the better of so many adverse motives, must have been a pretty strong one, how could you have insured a man's doing a single stroke of work? and, even *with* such interest, how could you have insured his not doing all sorts of mischief? As to mischief, I observed to you, under the article of safe custody, how easy their keeper might make himself upon that score: and as to work, I flatter myself you perceive already, that there need be no great fear of a want of inducements adequate to that purpose.

If, after all, it should be insisted that some power of correction would be absolutely necessary—for instance, in the case of a prisoner's assaulting a keeper or teacher at the time of receiving his food or his instruction (a case which, though never very probable, would be always possible)—such a power, though less necessary here than anywhere else, might, on the other hand, be given with less danger. What tyranny could subsist under such a perfect facility of complaint as is the result of so perfect a facility of inspection? But on this head a word is sufficient, after what I have said in considering the general heads of advantage dependent on this principle. Other checks assistant to this are obvious enough. A *correction-book* might be kept, in which every instance of chastisement, with the cause for which it was administered, might be entered upon record: any the slightest act of punishment not entered to be considered as a lawless injury. If these checks be not enough, the presence of one or more persons, besides him by whom the correction was actually administered, might be required as witnesses of the mode and quantum of correction, and of the alleged cause.

But, besides preventing his starving them or using them ill, there is another thing I should be much inclined to do, in order to make it his interest to take care of them. I would make him pay so much for every one that died, without troubling myself whether any care of his could have kept the man alive. To be sure, he would make me pay for this in the contract; but as I should receive it from him afterwards, what it cost me in the long run would be no great matter. He would get underwriter's profit by me; but let him get that, and welcome.

Suppose three hundred prisoners; and that, out of that number of persons of their ages, ten, that is, one out of thirty, ought to die every year, were they taken at large. But persons of their character and in their condition, it may be expected, will die faster than honest men. Say, therefore, one in twenty, though I believe, as jails stand at present, if no more than one in ten die, or, for aught I know, out of a much smaller number, it may be thought very well. Give the contractor, then, for every man that ought to die, for instance ten pounds: that sum, repeated for every man in twenty among three hundred, will amount to a hundred and fifty pounds. Upon these terms, then, at the end of the year make him pay ten pounds for every man that has actually died within that time; to which you may add, *or escaped*, and I dare say he will have no objection. If by nursing them and making much of them he should find himself at the end of the year a few pounds the richer by his tenderness, who would grudge it him? If you have still any doubt of him, instead of the ten pounds you may put twenty: you will not be much the poorer for it. I don't know, upon second thoughts, whether somewhat of this sort has not been put in practice, or at least proposed, for foundlings. Be that as it may, make but my contractor's allowance large enough, and you need not doubt of his fondness of these his adopted children; of whom whosoever may chance while under his wing to depart this vale of tears, will be sure to leave one sincere mourner at least, without the parade of mourning.

Some perhaps may be for observing, that, upon my own principles, this contrivance would be of no use but to save the useless,

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since the contractor, of himself, knows better things than not to take care of a cow that will give milk. But, with their leave, I do not mean that even the useless should be starved; for if the judges had thought this proper, they would have said so.

The patrons of the hard-labour bill, proceeding with that caution and tenderness that pervades their whole system, have denied their *governor*, as they call him, the power of whipping. Some penal power, however, for putting a stop to mischief, was, under their plan, absolutely necessary. They preferred, as the mildest and less dangerous power, that of confining a man in a *dark dungeon under ground*, under a bread-and-water diet. I did then take the liberty to object against the choosing, by way of punishment, the putting of a man into a place which differed not from other places in any essential particular, but that of the chance it stood of proving unwholesome; proposing, at the same time, a very simple expedient, by which their ordinary habitations might be made to receive every other property of a dungeon; in short, the making of them dark.

But in one of my brother's inspection-houses, there the man is in his dungeon already (the only sort of dungeon, at least, which I conceive any man need be in,) very safe and quiet. He is likewise entertaining himself with his bread and water, with only one little circumstance in his favour, that whenever he is tired of that regimen, it is in his own power to put himself under a better: unless my contractor chooses to fine himself for the purpose of punishing his boarder—an act of cruelty which I am in no great dread of.

In short, bating the checks you have seen, and which certainly are not very complicated, the plan of establishment which such a principle of construction seems, now at least, if not for the first time, to render eligible, and which as such I have been venturing to recommend, is exactly upon a par, in point of simplicity, with the forced and temporary expedient of the *ballast-lighters*—a plan that has the most perfect simplicity to recommend it, and, I believe, not much else. The chief differences are, that convicts are not, in the inspection-houses, as in those lighters, jammed together in fetters under a master subject to no inspection, and scarce under any controul, having no interest in their welfare or their work, in a place of *secret* confinement, favourable to infection and to escapes.

LETTER XIII.

MEANS OF EXTRACTING LABOUR.

UNDERSTANDING thus much of his situation, my contractor, I conceive, notwithstanding the checks you have seen, will hardly think it necessary to ask me how he is to manage to persuade his boarders to set to work.—Having them under this regimen, what better security he can wish for of their working, and that to their utmost, I can hardly imagine. At any rate, he has much better security than he can have for the industry and diligence of any ordinary journeyman at large, who is paid by the day, and not by the piece. If a man won't work, nothing has he to do, from morning to night, but to eat his bad bread and drink his water, without a soul to speak to. If he will work, his time is occupied, and he has his meat and his beer, or whatever else his earnings may afford him, and not a stroke does he strike but he gets something, which he would not have got otherwise. This encouragement is necessary to his doing his utmost: but more than this is not necessary. It is necessary every exertion he makes should be sure of its reward; but it is not necessary that such reward be so great, or any thing near so great, as he might have had, had he worked elsewhere. The confinement, which is his punishment, preventing his carrying the work to another market, subjects him to a monopoly; which the contractor, his master, like any other monopolist, makes, of course, as much of as he can. The workman lives in a poor country, where wages are low; but in a poor country, a man who is paid according to his work will exert himself at least as much as in a rich one. According to Mr. Arthur Young, and the very cogent evidence he gives, he should work more: for more work that intelligent traveller finds always done in dear years than in plentiful ones: the earnings of one day affording, in the latter case, a fund for the extravagance of the next. But this is not all. His master may fleece him, if he pleases, at both ends. After sharing in his profits, he may again take a profit upon his expense. He would probably choose to employ both expedients together. The tax upon earnings, if it stood alone, might possibly appear liable to be evaded in some degree, and be frustrated in some cases, by a confederacy between the workmen and their employers out of doors; the tax upon expenditure, by their frugality, supposing that virtue to take root in such a soil; or in some instances, perhaps, by their generosity to their friends without doors. The tax upon earnings would probably not be laid on in an open way, upon any other than the *good* hands; whose traffic must be carried on, with or without his intervention, between them and their out-of-door employers. In the trades which he thought proper to set up of himself for his *capable* hands, his *promising* hands, and his *drones*, the tax might be levied in a more covert way by the lowering of the price paid by him, in comparison of the free prices given out of doors for similar work. Where he is

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sure of his men, as well with regard to their disposition to spend as with regard to their inability to collude, the tax upon expenditure, without any tax upon profits open or covert, would be the least discouraging: it would be the least discouraging for the present, as the earnings would sound greater to their ears; and with a view to the future, as they would thereby see (I mean such of them as had any hopes of releasement) what their earnings might at that happy period be expected to amount to, in reality as well as in name

LETTER XIV.

PROVISION FOR LIBERATED PERSONS.

THE circumstance touched upon at the close of my last letter, suggests another advantage, and that not an inconsiderable one, which you will find more particularly, if not exclusively, connected with the contract plan.

The turning of the prisoners' labour into the most profitable channels being left free, depending upon the joint choice of the two only parties interested in pushing the advantage to the utmost, would afford a resource, and that I should conceive a sure one, for the subsistence of the prisoners, after the expiration of their terms. No trade that could be carried on in this state of thraldom, but could be carried on with at least equal advantage in a state of liberty. Both parties would probably find their account in continuing their manufacturing connexion, after the dissolution of every other. The workman, after the stigma cast on him by the place of his abode, would probably not find it so easy to get employment elsewhere. If he got it at all, it would be upon terms proportioned in some measure to the risk which an employer at large might think he would run on his own part, and in some cases to the danger of driving away fellow-workmen, by the introduction of an associate who might prove more or less unwelcome. He would therefore probably come cheaper to his former master than another man would; at the same time that he would get more from him in his free state than he had been used to get when confined.

Whether this resource was in contemplation with the planners of the hard-labour bill, I cannot pretend to say: I find not upon the face of that bill any proof of the affirmative. It provides a sum for each prisoner, partly for present subsistence, partly as a sort of little capital to be put into his pocket upon his discharge. But the sole measure assigned to this sum is the good behaviour of the party, not the sum required to set him up in whatever might have been his trade. Nor had the choice of his employment been left to the governor of the house, still less to the prisoner, but to committees of justices, as I observed before.

As to the Woolwich Academy, all ideas of reformation under that name, and of a continuance of the like industry as a means of future provision, seem there to have been equally out of the question. That they should hire lighters of their own to heave ballast from, does not appear to have been expected; and if any of them had had the fortune to possess trades of their own before, the scraping of gravel for three, five, or seven years together out of the river, had no particular tendency, that I can see, to rub up the recollection of those trades. The allowance upon discharge would, however, always have its use, though not always the same use. It might help to fit them out for trades; it might serve them to get drunk with; it might serve them to buy any house-breaking implements which they could not so well come at to steal.—The separation between the landlord and his guests must on his side have been rendered the less affecting, by the expectation which he could not but entertain of its proving but a short one. Nor was subsequent provision of one sort or other by any means wanting, for those who failed to find it *there*. The gallows was always ready with open arms to receive as many as the jail-fever should have refused.

LETTER XV.

PROSPECT OF SAVING FROM THIS PLAN.

MANY are the data with which a man ought to be furnished (and with not one of which am I furnished) before he pretended to speak upon any tolerable footing of assurance with regard to the advantage that might be expected in the view of pecuniary economy from the inspection plan. *On the one hand*, the average annual amount of the *present* establishments, whatever they are (for I confess I do not know,) for the disposal of convicts: The expected amount of the like average with regard to the measure which I have just learnt has been resolved upon, for sending colonies of them to New South Wales, including as well the maintenance of them till shipped, as the expense of the transportation, and the maintenance of them when they are got there:—*On the other hand*, the capital proposed to have been expended in the *building* and *fitting up* the experimental *penitentiary-house*:——The further capital proposed to have been expended in the *furniture* of it:—The sum proposed to have been allowed per man for the *maintenance* of the prisoners till the time when their labour might be expected to yield a produce. These points and a few others being ascertained, I should then be curious to know what degree of produc-

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tiveness, if any, would be looked upon as giving to the measure of a penitentiary-house, either of any construction or of this extraordinary one, the pre-eminence upon the whole over any of the other modes of disposal now in practice or in contemplation. Many distinct points for the eye to rest upon in such a scale will readily occur:—1*st*, The produce might be barely sufficient to pay the expense of *feeding;*—2*d*, It might farther pay the expense of *clothing;*—3*d*, It might farther pay the expense of *guarding* and *instructing*, viz. the salaries or other emoluments of the numerous tribe of visitors, governors, jailors, task-masters, &c. in the one case, and of the contractor and his assistants in the other;—4*th*, It might farther pay the *wear and tear* of the working-stock laid in;—5*th*, It might farther pay the *interest* of the *capital* employed in the purchase of such stock;—6*th*, It might farther pay the interest of the capital laid out in the *erecting* and *fitting* up the establishment in all its parts, at the common rate of interest for money laid out in building;—7*th*, It might farther pay, at the ordinary rate, the *interest* of the money, if any, laid out in the *purchase* of the *ground*. Even at the first mentioned and lowest of these stages, I should be curious to compare the charge of such an institution with that of the least chargeable of those others that are as yet preferred to it. When it had arisen above the last, then, as you see, and not till then, it could be said to yield a profit, in the sense in which the same thing could be said of any manufacturing establishment of a private nature.

But long before that period, the objections of those whose sentiments are the least favourable to such an establishment would, I take for granted, have been perfectly removed. Yet what should make it stop anywhere short of the highest of those stages, or what should prevent it from rising even considerably above the highest of them, is more, I protest, than I can perceive. In what points a manufacturer setting up in such an establishment would be in a *worse* situation than an ordinary manufacturer, I really do not see; but I see many points in which he is in a *better*. His hands, indeed, are all raw, perhaps, at least with relation to the particular species of work which he employs them upon, if not with relation to every other. But so are all hands everywhere, at the first setting up of every manufacture. Look round, and you will find instances enough of manufactures where children, down to four years old, earn something, and where children a few years older earn a subsistence, and that a comfortable one. I must leave to you to mention names and places. You, who have been so much of an English traveller, cannot but have met with instances in plenty, if you have happened to note them down. Many are the instances you must have found in which the part taken by each workman is reduced to some one single operation of such perfect simplicity, that one might defy the awkwardest and most helpless idler that ever existed to avoid succeeding in it. Among the eighteen or twenty operations into which the process of pin-making has been divided, I question whether there is any one that is not reduced to such a state. In this point, then, he is upon at least as good a footing as other manufacturers: but in all other points he is upon a better. What hold can any other manufacturer have upon his workmen, equal to what my manufacturer would have upon his? What other master is there that can reduce his workmen, if idle, to a situation next to starving, without suffering them to go elsewhere? What other master is there, whose men can never get drunk unless he chooses they should do so? and who, so far from being able to raise their wages by combination, are obliged to take whatever pittance he thinks it most for his interest to allow? In all other manufactories, those members of a family who can and will work, must earn enough to maintain not only themselves but those who either cannot or will not work. Each master of a family must earn enough to maintain, or at least help to maintain a wife, and to maintain such as are yet helpless among his children. My manufacturer's workmen, however cramped in other respects, have the good or ill fortune to be freed from this incumbrance—a freedom, the advantage of which will be no secret to their master, who, seeing he is to have the honour of their custom in his capacity of shopkeeper, has taken care to get the measure of their earnings to a hair's-breadth. What other manufacturers are there who reap their profits at the risk of other people, and who have the purse of the nation to support them, in case of any blameless misfortune? And to crown the whole by the great advantage which is the peculiar fruit of this new principle, what other master or manufacturer is there, who to appearance constantly, and in reality as much as he thinks proper, has every look and motion of each workman under his eye? Without any of these advantages, we see manufacturers not only keeping their heads above water, but making their fortunes every day. A manufacturer in this situation *may* certainly fail, because so may he in any other. But the probability is, he would *not* fail: because, even without these great advantages, much fewer fail than thrive, or the wealth of the country could not have gone on increasing as it has done, from the reign of Brutus to the present. And if political establishments were to wait till probability were converted into certainty before trial, *Parliament* might as

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well go to bed at once, and sleep on the same pillow with sister *convocation*.

To speak in sober sadness, I do dearly love, as you well know, in human dealings no less than in divine, to think and to say, as far as conscience will allow me, that "whatever is, is right;" as well concerning those things which are done, as concerning those which have been left undone. The gentlemen who gave themselves so much trouble about the penitentiary-house plan, did extremely well; and, for aught I know, the gentlemen who put it under the table at last, may have done still better. If you have a mind to share with me in this comfortable feeling, turn once more to that discarded favourite, and observe what load of expense, some part then necessary, some perhaps not altogether so, it was to have thrown upon the nation; and, at the same time, what will be still more comfortable to you, how great a proportion of that expense would be struck off, by the new and of course still greater favourite, which I have ventured to introduce to you.

In the first place, there was to have been a vast extent of ground; for it was to have had *rope-walks* and *timber-yards*, and it is well it was not to have had dock-yards. Then, for the sake of healthiness, that ground was to have a command of *running water:* then again, for the convenience of dignified inspectors, that ground and that water were to have been in the *vicinity of the metropolis*. It was to have been on the banks of the Thames — somewhere, I think, about Wandsworth and Battersea; and a site fit for I know not how many of the most luxurious villas that fancy could conceive or Christie describe, was to be buried under it. Seven-and-twenty thousand pounds, I think, was the price talked of, and, for aught I know, paid, for the bare ground, before so much as a spade was put in it.* As to my contractor, eighteen or twenty acres of the most unprofitable land your country or any other contains, any waste land, in short, which the crown has already in its possession, would answer every plea he could put in; and out of that he would crib gardens for his own accommodation, and farm-yards, and I know not what besides. As to *running water*, it is indeed to every purpose a very agreeable circumstance, and, under the ordinary jail regimen, a very desirable, possibly an essential one. But many of the Lords and Commons make shift without it, even at their villas, and almost all of them when not at their villas, without ascribing any want of health they may labour under to the want of running water. As to my contractor's boarders, they must have water, indeed, because everybody must have water; but under the provision I have made for turning the operations of cleanliness into *motions of course*, I should apprehend their condition might still be tolerable, should they have no other running stock of that necessary element than what falls to the share of better men.

When the ground thus dearly wrung from the grasp of luxury came to be covered, think what another source of expense was to be opened, when, over and above nine hundred roomy chambers for so many persons to *lie* in, three other different classes of apartments were to be provided, to I know not what number nor extent, for them to *work* in, to *pray* in, and to *suffer* in!—four operations, the scenes of which are, upon our plan, consolidated into one.

I need not add much to what I have said in a former letter, about the tribe of subordinate establishments, each of them singly an object of no mean expense, which it seems to have been in contemplation to inclose within the fortress: I mean the mills, the forges, the engines, the timber-yards, and the rope-walks. The seal which stamps my contract dispels, as if it were a talisman, this great town in *nubibus;* and two or three plain round houses take its place. Either I am much mistaken, or a sum not much exceeding what was paid or destined for the bare ground of the proposed penitentiary-houses, would build and completely fit up those round houses, besides paying for the ground.

To this account of the *dead* stock is to be added, if I may say it without offence, that of the *live* stock of inspectors, of every rank and denomination: I mean the pyramid of under-keepers, and task-masters, and store-keepers, and governors, and committees of magistrates, which it builds up, all to be paid up and salaried, with allowances rising in proportion to the rise of dignity: the whole to be crowned with a grand triumvirate of superintendents, two of whom were to have been members of parliament, men of high birth and quality, whose toilsome dignity a minister would hardly have affronted by the offer of salaries much inferior to what are to be found annexed to sinecures.

I will not say much of the "other officers," without number, which I see, by my *View of the Hard-labour Bill*, were to have been added, and of course must have been added, in such number as the "committees" of your * * * * to whom this business was then committed, or at any rate some other good judges should have judged "necessary."

Officers and governors, *eo nomine*, my contractor would have none: and any superfluous clerk or over-looker, who might be found lurking in his establishment, he would have much less tenderness for, than your gardener

* I do not recollect from what source I took this idea of the sum. I now understand it to have been no more than five thousand pounds.

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has for the sow-thistles in your garden. The greatest part of *his* science comes to *him* in maxims from his grand-mother; and amongst the foremost of those maxims is that which stigmatizes as an unfrugal practice, the keeping of more cats than will catch mice.

If, under all these circumstances, the penitentiary-houses should have been somewhat of a bugbear, it will be the less to be wondered at, when one considers the magnitude of the scale upon which this complicated experiment was going to be made. I mentioned in round numbers nine hundred as the number of convicts which was going to be provided for; but 888 was the exact number mentioned in the bill. Three eights, "thus arranged, a terrible show!" But granting this to be the number likely to require provision of some kind or other, it surely does not follow that all that require it must necessarily be provided for in this manner, or in none. If the eight hundred and eighty eight appear so formidable, gentlemen may strike off the hundreds, and try whether the country will be ruined by an establishment inferior to that which an obscure ex-countryman of theirs is going to amuse himself with.

What I have all along been taking for granted is, that it is the mere dread of extravagance that has *driven* your thrifty minister from the penitentiary-house plan — not the love of transportation that has *seduced* him from it. The inferiority of the latter mode of punishment in point of exemplarity and equality — in short, in every point but that of expense, stands, I believe, undisputed. I collected the reasons against it, that were in every body's mouth, and marked them down, with, I think, some additions (as you may or may not remember) in my view of the hard-labour bill, supplement included. I have never happened to hear any objections made to those reasons; nor have I heard of any charms, other than those of antiquity and comparative frugality, that transportation has to recommend it. Supposing, therefore, what I most certainly do not suppose, that my contractor could not keep his people at home at *less* expense than it would take to send them abroad, yet if he could keep them at no *greater* expense, I should presume that even this would be reckoned no small point gained, and that even this very moderate success would be sufficient to put an end to so undesirable a branch of navigation.

Nor does any preference that might be given to the transportation plan, supersede the necessity of this or some other substitute to it, in the many cases to which it cannot be conceived that plan should be extended. Transportation to this desert for seven years— a punishment which under such circumstances is so much like transportation for life—is not, I suppose, to be inflicted for every peccadillo. Vessels will not be sailing every week or fortnight upon this four or five or six months navigation: hardly much oftener, I should suppose, than once a twelvemonth. In the meantime, the convicts must be somewhere: and whether they are likely to be better qualified for colonization by lounging in an ordinary jail, or rotting on board a ballast hulk, or working in an inspection-house, may now, I think, be left for any one to judge.

LETTER XVI.

HOUSES OF CORRECTION.

IN considering my brotner's inspection plan as applicable to the purpose of establishments designed to force labour, my principal theme has hitherto been the national establishment of *penitentiary-houses*. My first design, however, was to help to drive the nail I saw a-going: I mean the *house of correction*, which the advertisement informed me was under consideration for your ****. I had little notion, at the outset, of attempting any such up-hill work as the heaving up again that huge stone, the *penitentiary-house*, which the builders at last had refused, and which, after the toiling and straining of so many years, had tumbled to the bottom. But the greater object grew upon me as I wrote; and what I found to say on that subject I grudged the less, as thinking it might, most of it, be more or less applicable to your establishment. How far, and in what particular respects, it may prove so, I have no means of knowing: I trouble you with it at a venture. In my last I proposed, if the nation were poor and fearful, a penitentiary-house upon a very small scale — so small, if such caution were thought necessary, as not to contain so many as a hundred prisoners. But however poor the nation may be, the ***** of **** surely is rich. What then should hinder your ***** from standing forth and setting the nation an example? What the number of persons you may have to provide for in this way is supposed to be, I have no means of knowing; but I should think it strange if it did not considerably exceed the one just mentioned. What it is you will risk by such an experiment, is more than I can see. As far as the building is concerned, it is a question which architects, and they alone, can answer. In the meantime, we who know nothing of the matter, can find no reason, all things considered, why a building upon this plan should cost more than upon another. But setting aside the building, every other difference is on the profitable side.

The precautions against escapes, and the restraints destined to answer the ends of punishment, would not, I suppose, in your establishment be quite so strict, as it would be

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necessary they should be in an establishment designed to answer the purpose of a penitentiary-house. Bars, bolts, and gratings, would in this of your's, I suppose, be rejected; and the inexorable *partition walls* might for some purposes be thinned away to boards or canvass, and for others thrown out altogether. With you, the gloomy paradox of crowded solitude might be exchanged, perhaps, for the cheerfulness of a common refectory. The Sabbath might be a Sabbath there as elsewhere. In the penitentiary inspection-house, the prisoners were to lie, as they were to eat, to work, to pray, and to do every thing. in their cells, and nowhere else. In your house of correction, where they should lie, or how they should lie, I stay not to inquire.

It is well, however, for you * * * gentlemen, that you are so rich; for in point of frugality, I could not venture to promise you anything like the success that I would to "poor old England." Your contractor's jail-birds, if you had a contractor, would be perpetually upon the wing: the short terms you would be sending them to him for, would seldom admit of their attaining to such a proficiency, as to make a profit upon any branch of industry. In general, what in a former letter I termed the *good* hands, would be his chief, if not his whole dependence; and that, I doubt, but a scanty one.

I will not pester you with further niceties applicable to the difference between *houses of correction*, and *work-houses*, and *poor-houses*, if any there should be, which are not work-houses; between the different modes of treatment that may be due to what are looked upon as the inferior degrees of *dishonesty*, to *idleness* as yet untainted with dishonesty, and to blameless *indigence*. The law herself has scarcely eyes for these microscopic differences. I bow down, therefore, for the present at least, to the counsel of so many sages, and shrink from the crime of being "wiser than the law."

LETTER XVII.

PRISONS FOR SAFE CUSTODY MERELY.

A WORD or two respecting the condition of *offenders before conviction:* or, if that expression should appear to include a solecism, of persons accused, who either for want of bail, or as charged with offences not bailable, have hitherto been made, through negligence or necessity, to share by anticipation so much of the fate of convicts, as imprisonment more or less rigid may amount to.

To persons thus circumstanced, the inspection principle would apply, as far as *safe custody* was concerned, with as much advantage as to convicts. But as there can be no ground for punishing them any otherwise than in so far as the *restraint* necessary for safe custody has the effect of punishment, there can be as little ground for subjecting them to *solitude;* unless where that circumstance should also appear necessary, either to safe custody, or to prevent that mental infection, which novices in the arts of dishonesty, and in debauchery, the parent of dishonesty, are so much in danger of contracting from the masters of those arts. In this view, therefore, the *partitions* might appear to some an unnecessary ingredient in the composition of the building; though I confess, from the consideration just alleged, they would not appear in that light to me. Communication must likewise be allowed to the prisoners with their friends and legal assistants, for the purpose of settling their affairs, and concerting their defence.

As forced labour is punishment, labour must not here be forced. For the same reason, and because the privation of such comforts of any kind as a man's circumstances allow him, is also punishment, neither should the free admission of such comforts, as far as is consistent with sobriety, be denied; nor, if the keeper is permitted to concern himself in any part of the trade, should he be permitted to make a greater profit than would be made by other traders.

But amongst persons of such description, and in such a multitude, there will always be a certain number, nor that probably an inconsiderable one, who will possess no means of subsistence whatever of their own. These then will, in so far, come under a predicament not very dissimilar to that of convicts in a penitentiary-house. Whatever works they may be capable of, there is no reason why subsistence should be given to them, any more than to persons free from suspicion and at large, but as the price for work, supposing them able to perform it. But as this ability is a fact, the judgment of which is a matter of great nicety, too much it may be thought by far to be entrusted to such hands, if to any, some allowance must therefore be made them *gratis*, and that at least as good a one as I recommended for the penitentiary-house. In order to supply the defects of this allowance, the point then will be, to provide some sort of work for such, who not having trades of their own which they can work at, are yet willing to take work, if they can get it. If to find such work might be difficult, even in a house of correction, on account of the shortness of the time which there may be for learning work, for the same reason it should be still more difficult in a prison appropriated to safe custody before conviction, at least in cases where, as it will sometimes happen, the commitment precedes the trial but a few days. If on the ground of being particularly likely to have it in his power to

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provide work, the contracting keeper of a penitentiary-house should be deemed the fittest person for the keeping of a *safe-custody house* (for so I would wish to call it, rather than a prison,) in other respects he might be thought less fit, rather than more so. In a penitentiary-house, he is an extortioner by trade: a trade he must wholly learn, every time he sets his foot in a safe-custody house, on pain of such punishment as unlicensed extortioners may deserve. But it by no means follows, because the keeper of a penitentiary-house has found one, or perhaps half-a-dozen sorts of work, any of which a person may make himself tolerably master of in the course of a few months, that he should be in possession of any that might be performed without learning, or learnt in a few days. If, therefore, for frugality's sake, or any other convenience, any other establishments were taken to combine with that of a safe-custody house, a house of correction would seem better suited to such a purpose, than a penitentiary-house. But without considering it as matter of necessity to have recourse to such shifts, the eligibility of which might depend upon local and other particular considerations, I should hope that employments would not be wanting, and those capable of affording a moderately good subsistence, for which a man of ordinary faculties would be as well qualified the first instant, as at the end of seven years. I could almost venture to mention examples, but that the reasons so often given stop my pen.

LETTER XVIII.

MANUFACTORIES.

AFTER so much as has been said on the application of our principle to the business of manufactories, considered as carried on by forced labour, you will think a very few words more than sufficient, in the view of applying it to manufactories carried on upon the ordinary plan of freedom.

The centrality of the presiding person's situation will have its use at all events; for the purpose of direction and order at least, if for no other. The concealment of his person will be of use, in as far as controul may be judged useful. As to partitions, whether they would be more serviceable in the way of preventing distraction, or disserviceable by impeding communication, will depend upon the particular nature of the particular manufacture. In some manufactories they will have a further use, by the convenience they may afford for ranging a greater number of tools than could otherwise be stowed within the workman's reach. In nice businesses, such as that of watch-making, where considerable damage might result from an accidental jog or a momentary distraction, such partitions, I understand, are usual.

Whatever be the manufacture, the utility of the principle is obvious and incontestible, in all cases where the workmen are paid according to their *time*. Where they are paid by the *piece*, there the interest which the workman has in the value of his work supersedes the use of coercion, and of every expedient calculated to give force to it. In this case, I see no other use to be made of the inspection principle, than in as far as instruction may be wanted, or in the view of preventing any waste or other damage, which would not of itself come home to the workman, in the way of diminishing his earnings, or in any other shape.

Were a manufactory of any kind to be established upon this principle, the *central lodge* would probably be made use of as the compting-house: and if more branches than one were carried on under the same roof, the accounts belonging to each branch would be kept in the corresponding parts of the lodge. The lodge would also serve as a sort of temporary store-room, into which the tools and materials would be brought from the workhouses, and from whence they would be delivered out to the workmen all around, as well as finished work received, as occasion might require.

LETTER XIX.

MAD-HOUSES.

I COME now with pleasure, notwithstanding the sadness of the subject, to an instance in which the application of the principle will be of the lenient cast altogether: I mean, that of the melancholy abodes appropriated to the reception of the insane. And here, perhaps, a noble lord now in administration might find some little assistance lent to the humane and salutary regulations for which we are chiefly indebted to his care.*

That any of the receptacles at present subsisting should be pulled down only to make room for others on the inspection principle, is neither to be expected nor to be wished. But, should any buildings that may be erected in future for this purpose be made to receive the inspection form, the object of such institutions could scarce fail of receiving some share of its salutary influence. The powers of the insane, as well as those of the wicked, are capable of being directed either against their fellow-creatures or against themselves. If in the latter case nothing less than perpetual chains should be availing, yet in all instances where only the former danger is to be

* Lord Sydney; who in the House of Commons brought in the bill for the regulation of mad-houses, which afterwards passed into an act.

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apprehended, separate cells, exposed, as in the case of prisons, to inspection, would render the use of chains and other modes of corporal sufferance as unnecessary in this case as in any. And with regard to the conduct of the keepers, and the need which the patients have to be kept, the natural, and not discommendable jealousy of abuse would, in this instance as in the former ones, find a much readier satisfaction than it could anywhere at present.

But without thinking of erecting mad-houses on purpose, if we ask Mr. Howard, he will tell us, if I do not misrecollect, that there are few prisons or work-houses but what are applied occasionally to this use. Indeed, a receptacle of one or other of these descriptions is the ready, and, I believe, the only resource, which magistrates find vested in their hands. Hence it was, he so often found his senses assailed with that strange and unseemly mixture of calamity and guilt —lunatics raving and felons rioting in the same room. But in every penal inspection-house, every vacant cell would afford these afflicted beings an apartment exempt from disturbance, and adapted to their wants.

LETTER XX.

HOSPITALS.

If any thing could still be wanting to show how far this plan is from any necessary connexion with severe and coercive measures, there cannot be a stronger consideration than that of the advantage with which it applies to *hospitals;* establishments of which the sole object is the relief of the afflicted, whom their own entreaties have introduced. Tenacious as ever of the principle of *omnipresence*, I take it for granted that the whole tribe of medical curators—the *surgeon*, the *apothecary*, the *matron*, to whom I could wish to add even the *physician*, could the establishment be but sufficient to make it worth his while, find in the inspection-lodge and what apartments might be added above it, their constant residence. Here the physician and the apothecary might know with certainty that the prescription which the one had ordered and the other made up, had been administered at the exact time and in the exact manner in which it was ordered to be administered. Here the surgeon would be sure that his instructions and directions had been followed in all points by his pupils and assistants. Here the faculty, in all its branches, might with the least trouble possible watch as much as they chose to watch, of the progress of the disease, and the influence of the remedy. Complaints from the sick might be received the instant the cause of the complaint, real or imaginary, occurred; though, as misconduct would be followed by instant reprehension, such complaints must be proportionably rare.

The separation of the cells might be in part, continued either for comfort or for decency. Curtains, instead of grating, would give the patients, when they thought fit, the option of being seen. Partitions of greater solidity and extent might divide the fabric into different wards, confining infection, adapting themselves to the varieties of disease, and affording, upon occasion, diversities of temperature.

In hot weather, to save the room from being heated, and the patients from being incommoded by the sun, *shades* or awnings might secure the windows towards the south.

I do not mean to entertain you here with a system of physic, or a treatise upon *airs*. But a word or two on this subject you must permit me. Would the ceilings of the cell be high enough? Is the plan of construction sufficiently favourable to ventilation? I have not the good fortune to have read a book published not long ago on the subject of hospitals, by our countryman Mr. Aikin, though I remember seeing some account of it in a review. But I cannot help begging of you to recommend to the notice of your medical friends, the perusal of Dr. De Maret's paper, in the *Memoirs of the Academy of Dijon* for the year 1782. If either his facts or his reasoning are to be trusted, not only no loftiness of ceiling is sufficient to ensure to such a building a purity of air, but it may appear questionable whether such an effect be upon the whole promoted by that circumstance.*

His great anxiety seems to be, that at some known period or periods of the day, the whole mass of air may undergo at once a total change, not trusting to partial and precarious evacuations by opening here and there a window; still less to any height or other amplitude of room—a circumstance which of itself tends to render them still more partial and precarious. Proscribing all rectilinear walls and flat ceilings forming angles at the junctions, he recommends accordingly for the inside of his building, the form of a long oval, curved in every direction except that of the floor, placing a door at each end. By throwing open these doors, he seems to make it pretty apparent, that the smallest draught will be sufficient to effect an entire change in the whole stock of air; since at which ever end a current of air happens first to enter, it will carry all before it till it gets to the other.

* To an hospital lately built at Lyons, a vast dome had been given in this view. It had been expected that the foul air should be found at top, while that near the floor should have been sweet and wholesome. On the contrary, substances which turned putrid at the bottom in a single day, remained sweet above at the end of five days.

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Opening windows, or other apertures, disposed in any other part of the room, would tend rather to disturb and counteract the current, than to promote it.

From the same reasoning it will follow, that the *circular* form demanded as the best of all by the inspection principle, must, in a view to ventilation, have in a considerable degree the advantage over *rectilinear;* and even, were the difference sufficiently material, the inspection principle might be applied to his oval with little or no disadvantage. The form of the inspection lodge might in this case follow that of the containing building; and that central part, so far from obstructing the ventilation, would rather, as it should seem, assist it, increasing the force of the current by the compressure.

It should seem also, that to a circular building, the central lodge would thus give the same aptitude to ventilation, which the Doctor's oval form possesses of itself.

To save his patients from catching cold while the current is passing through the room, the Doctor allows to each a short *screen*, like the head of a cradle, to be rested on the bed.

Here the use of the tin *speaking-tubes* would be seen again, in the means they would afford to the patient, though he were equal to no more than a whisper, of conveying to the lodge the most immediate notice of his wants, and receiving answers in a tone equally unproductive of disturbance.

Something I could have wished to say on the important difference between the general and comparatively immaterial impurity resulting merely from the *phlogiston*, and the various particular impurities constituted by the various products of *putrefaction*, or by the different matters of the various *contagions*. Against these very different dangers, the mode and measure of precaution might admit of no small difference. But this belongs not necessarily to the subject, and you would not thank me, any more than gentlemen of the faculty who understand it better than I, or gentlemen at large who would not wish to understand it.

An hospital built and conducted upon a plan of this kind, of the success of which everybody might be an observer, accessible to the patients' friends, who, without incommoding or being incommoded, might see the whole economy of it carried on under their eye, would lose, it is to be hoped, a great part of those repelling terrors, which deprive of the benefit of such institutions many objects whom prejudice, in league with poverty, either debars altogether from relief, or drives to seek it in much less eligible shapes. Who knows but that the certainty of a medical attendance, not occasional, short-lived, or even precarious, as at present, but constant and uninterrupted, might not render such a situation preferable even to home, in the eyes of many persons who could afford to pay for it? and that the erection of a building of this kind might turn to account in the hands of some enterprising practitioner?

A *prison*, as I observed in a former letter, includes an hospital. In prisons on this construction, every cell may receive the properties of an hospital, without undergoing any change. The whole prison would be perhaps a better hospital than any building known hitherto by that name. Yet should it be thought of use, a few cells might be appropriated to that purpose; and perhaps it may be thought advisable that some cases of infection should be thrown out, and lodged under another roof.

But if infection in general must be sent to be *cured* elsewhere, there is no spot in which infection originating in negligence can, either in the *rise* or *spread* of it, meet with such obstacles as here. In what other instance as in this, will you see the interests of the governor and the governed in this important particular, so perfectly confounded and made one? — those of the keeper with those of the prisoners—those of the medical curator with those of the patients? Clean or unclean, safe or unsafe, he runs the chance that they do: if he lets them poison themselves, he lets them poison *him*. Encompassed on all sides by a multitude of persons, whose good or bad condition depends upon himself, he stands as a hostage in his own hands for the salubrity of the whole.

LETTER XXI.

SCHOOLS.

AFTER applying the inspection principle first to prisons, and through mad-houses bringing it down to hospitals, will the parental feelings endure my applying it at last to schools? Will the observation of its efficacy in preventing the irregular application of undue hardship even to the guilty, be sufficient to dispel the apprehension of its tendency to introduce tyranny into the abodes of innocence and youth?

Applied to these, you will find it capable of two very distinguishable degrees of extension: — It may be confined to the hours of study; or it may be made to fill the whole circle of time, including the hours of repose, and refreshment, and recreation.

To the first of these applications the most captious timidity, I think, could hardly fancy an objection: concerning the hours of study, there can, I think, be but one wish, that they should be employed in study. It is scarce necessary to observe that gratings, bars, and bolts, and every circumstance from which an inspection-house can derive a terrific charac-

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ter, have nothing to do here. All play, all chattering — in short, all distraction of every kind, is effectually banished by the central and covered situation of the master, seconded by partitions or screens between the scholars, as slight as you please. The different measures and casts of talent, by this means rendered, perhaps for the first time, distinctly discernible, will indicate the different degrees of attention and modes of culture most suitable to each particular disposition; and incurable and irreproachable dulness or imbecility will no longer be punished for the sins of idleness or obstinacy. That species of fraud at Westminster called *cribbing*, a vice thought hitherto congenial to schools, will never creep in here. That system of premature corruption, in which idleness is screened by opulence, and the honour due to talents or industry is let out for hire, will be completely done away; and a nobleman may stand as good a chance of knowing something as a common man.

Nor, in point of present enjoyment, will the scholars be losers by the change. Those sinkings of the heart at the thoughts of a task undone, those galling struggles between the passion for play and the fear of punishment, would there be unknown. During the hours of business, habit, no longer broken in upon by accident, would strip the master's presence of its terrors, without depriving it of its use. And the time allotted for study being faithfully and rigidly appropriated to that service, the less of it would serve.

The separate spaces allotted for this purpose would not in other respects be thrown away. A bed, a bureau, and a chair, must be had at any rate; so that the only extraordinary expense in building would be for the *partitions*, for which a very slight thickness would suffice. The youth of either sex might by this means sleep, as well as study, under inspection, and alone — a circumstance of no mean importance in many a parent's eye.

In the Royal Military School at Paris, the bed-chambers (if my brother's memory does not deceive him) form two ranges on the two sides of a long room; the inhabitants being separated from one another by *partitions*, but exposed alike to the view of a master at his walks, by a kind of a *grated window* in each door. This plan of construction struck him, he tells me, a good deal, as he walked over that establishment (about a dozen years ago, was it not?) with you; and possibly in that walk the foundation was laid for his Inspection-House. If he there borrowed his idea, I hope he has not repaid it without interest. You will confess some difference, in point of facility, betwixt a state of incessant walking and a state of rest; and in point of completeness of inspection, between visiting two or three hundred persons one after another, and seeing them at once.

In stating what this principle *will* do in promoting the progress of instruction in every line, a word or two will be thought sufficient to state what it will *not* do. It *does* give every degree of efficacy which can be given to the influence of *punishment* and *restraint*. But it does nothing towards correcting the oppressive influence of punishment and restraint, by the enlivening and invigorating influence of *reward*. That noblest and brightest engine of discipline can by no other means be put to constant use in schools, than by the practice which at Westminster, you know, goes by the name of *challenging* — an institution which, paying merit in its fittest and most inexhaustible coin, and even uniting in one impulse the opposite powers of reward and punishment, holds out dishonour for every attention a boy omits, and honour for every exertion he can bestow.

With regard to the extending the range of inspection over every moment of a boy's time, the sentiments of mankind might not be altogether so unanimous. The notion, indeed, of most parents is, I believe, that children cannot be too much under the master's eye; and if man were a consistent animal, none who entertain that notion but should be fonder of the principle the farther they saw it pursued. But as consistency is of all human qualities the most rare, it need not at all surprise us, if, of those who in the present state of things are most anxious on the head of the master's omnipresence, many were to fly back and change their note, when they saw that point screwed up at once to a pitch of perfection so much beyond whatever they could have been accustomed to conceive.

Some there are, at any rate, who, before they came into so novel a scheme, would have many scruples to get over. Doubts would be started — Whether it would be advisable to apply such constant and unremitting pressure to the tender mind, and to give such herculean and ineludible strength to the gripe of power? — whether persons, of the cast of character and extent of ideas that may be expected to be found in the common run of schoolmasters, are likely to be fit receptacles for an authority so much exceeding anything that has been hitherto signified by *despotic*? — whether the *in*-attention of the master may not be as necessary to the *present* comfort of his *pupil*, in some respects, as the attention of the one may be to the *future* welfare of the other, in other respects? — whether the irretrievable check given to the free development of the intellectual part of his frame by this unintermitted pressure, may not be productive of an imbecility similar to that which would be produced by constant and long-continued *bandages* on the corporeal part? — whether what is thus acquired in *regularity* may not be lost in *energy*? — whether that

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not less instructive, though less heeded, course of discipline, which in the struggles of passion against passion, and of reason against reason, is administered by the children to one another and to themselves, and in which the conflicts and competitions that are to form the business of maturity are rehearsed in miniature; whether I say, this moral and most important branch of instruction would not by these means be sacrificed to the rudiments, and those seldom the most useful, of the intellectual?—whether the defects, with which *private* education has been charged in its comparison with public, would not here be carried to the extreme?—and whether, in being made a little better acquainted with the world of abstraction than they might have been otherwise, the youth thus pent up may not have been kept more than proportionably ignorant of the world of realities into which they are about to launch?—whether the liberal spirit and energy of a free citizen would not be exchanged for the mechanical discipline of a soldier, or the austerity of a monk?—and whether the result of this high-wrought contrivance might not be constructing a set of *machines* under the similitude of *men*?

To give a satisfactory answer to all these queries, which are mighty fine, but do not any of them come home to the point, it would be necessary to recur at once to the end of education. Would *happiness* be most likely to be increased or diminished by this discipline? —Call them soldiers, call them monks, call them machines: so they were but happy ones, I should not care. Wars and storms are best to read of, but peace and calms are better to enjoy. Don't be frightened now, my dear *****, and think that I am going to entertain you with a course of moral philosophy, or even with a system of education. Happiness is a very pretty thing to feel, but very dry to talk about; so you may unknit your brow, for I shall say no more about the matter. One thing only I will add, which is, that whoever sets up an inspection-school upon the tiptop of the principle, had need to be very sure of the master; for the boy's body is not more the child of his father's, than his mind will be of the master's mind; with no other difference than what there is between *command* on one side and *subjection* on the other.

Some of these fine queries which I have been treating you with, and finer still, Rousseau would have entertained us with; nor do I imagine he would have put his *Emilius* into an inspection-house; but I think he would have been glad of such a school for his Sophia.

Addison, the grave and moral Addison, in his *Spectator* or his *Tatler*, I forget which, suggests a contrivance for trying *virginity* by means of *lions*. You may there find many curious disquisitions concerning the measures and degrees of that species of purity; all which you will be better pleased to have from that grave author than from me. But, without plunging into any such discussions, the highest degree possible, whatsoever that may be, is no more than anybody might make sure of, only by transferring damsels at as early an age as may be thought sufficient, into a strict inspection-school. Addison's scheme was not only a penal but a bloody one: and what havoc it might have made in the population of the country, I tremble but to think of. Give thanks, then, to *Diana* and the *eleven thousand virgins*, and to whatever powers preside over virginity in either *calendar*, for so happy a discovery as this of your friend's. There you saw blood and uncertainty: here you see certainty without blood. What advantage might be made by setting up a boarding-school for young ladies upon this plan, and with what eagerness gentlemen who are curious in such matters would crowd to such a school to choose themselves wives, is too obvious to insist on. The only inconvenience I can think of is, that if the institution were to become general, Mrs. Ch. H. and other gentlewomen of her calling, would be obliged either to give up house-keeping, or take up with low wenches or married ladies.

Dr. Brown the estimator would have been stark mad for an inspection-school upon the very extremity of the principle, provided always he were to have been head-master, and then he would have had no other schools but those. His antagonist, Dr. Priestly, would, I imagine, be altogether as averse to it, unless, perhaps, for experiment's sake, upon a small scale, just enough to furnish an appendix to *Hartley upon Man*.

You have a controversy, I find, in England, about *Sunday-schools*. Schools upon the extremity of the inspection-principle would, I am apt to think, find more advocates among the patrons than among the oppugners of that measure.

We are told, somewhere or other, of a King of Egypt (*Psammitichus*, I think, is his name) who thinking to re-discover the lost original of language, contrived to breed up two children in a sequestered spot, secluded, from the hour of their birth, from all converse with the rest of humankind. No great matters were, I believe, collected from this experiment. An inspection-house, to which a set of children had been consigned from their birth, might afford experiments enough that would be rather more interesting. What say you to a *foundling-hospital* upon this principle? Would * * * *'s *manes* give you leave to let your present school and build another upon this ground? If I do not misrecollect, your brethren in that trust have gone so far as to make a point, where it can be effected, of taking the children out of the

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hands of their parents as much as possible, and even, if possible, altogether. If you have gone thus far, you have passed the Rubicon; you may even clap them up in an inspection-house, and then you make of them what you please. You need never grudge the parents *a peep behind the curtain* in the master's lodge. There, as often as they had a mind, they might see their children thriving and learning, if that would satisfy them, without interrupting business or counteracting discipline. Improving upon Psammitichus's experiment, you might keep up a sixteen or eighteen years separation between the male and female part of your young subjects; and at the end of that period see what the language of love would be, when *Father Francis's Ganders* were turned into *Father Francis's Geese.*

I know who would have been delighted to set up an inspection-school, if it were only for the experiment's sake, and that is Helvetius: at least, if he had been steady to his principles, which he was said to be: for by that contrivance, and by that alone, he might have been enabled to give an experimental proof of the truth of his position (supposing it to be true) that anybody may be taught anything, one person as well as another. It would have been his fault, if what he requires as a condition, viz. that the subjects of the experiment be placed in circumstances exactly similar, were not fulfilled.

A rare field for discovery in *metaphysics:* a science which, now for the first time, may be put to the test of experiment, like any other. Books, conversation, sensible objects, everything, might be *given.* The genealogy of each observable idea might be traced through all its degrees with the utmost nicety: the parent stocks being all known and numbered. Party men, controversialists of every description, and all other such epicures, whose mouth waters at the mammon of power, might here give themselves a rich treat, adapted to their several tastes, unembittered by contradiction. Two and two might here be less than four, or the moon might be made of green cheese; if any pious founder, who were rich enough, chose to have her of that material. Surrounded by a circle of pupils, obsequious beyond anything as yet known under the name of obsequiousness, their happiness might in such a mansion be complete, if any moderate number of adherents could content them; which unhappily is not the case. At the end of some twenty or five-and-twenty years, introduce the scholars of the different schools to one another (observing first to tie their hands behind them) and you will see good sport; though perhaps you may think there is enough of that kind of sport already. But if you throw out this hint to anybody, you will take care, as far as sects and religions are concerned, not to mention names; for of these, how few are there but would be ready to pull us to pieces, if they saw their rivals set down upon the same line, as candidates for the same advantage? And this is what we should get by our impartiality.—You may, however, venture to hint, that the money which is now laid out for propagating controversy, by founding sermons and lectures, might be laid out with greater certainty of advantage in the founding *controversial inspection-schools.* The preachers must be sad bunglers, indeed, if they had not there as many adherents as auditors; which is not always the case in the world at large. As to flagellation, and other such ceremonies, which more through custom than necessity are used by way of punishment in schools, but which under some institutions form the *routine* of life, I need not take up your time in showing how much the punctuality of those transactions might, in the latter case, be improved by the inspection principle. These monastic accomplishments have not been in fashion in our country for some ages:—therefore it would be lost labour to recommend the principle in that view. Neither are they a whit more so where I write; so that I should get as little thanks for my pains, were I to make such a proposal here. On the contrary, we are dissolving monasteries as you would lumps of sugar. A lump, for instance, we got the other day at Kieff, enough to feed a brace of regiments, besides pickings for other people. But if in my return to England, or at any other time, I should happen to go by the monastery of *La Trappe,* or any other where they are in earnest about such business, it would be cruelty to deny them the assistance it might be made to receive from the inspection principle. *Flinching* would then be as impracticable in a monastery, as *cribbing* in a school. Old scores might thus be rubbed out with as much regularity as could be desired; nor would the pride of *Toboso* have been so long a-disenchanting, could her *Knight* have put his coward *Squire* into an inspection-house.

Neither do I mean to give any instructions to the *Turks* for applying the inspection principle to their *seraglios:* no, not though I were to go through Constantinople again twenty times, notwithstanding the great saving it would make in the article of *eunuchs,* of whom one trusty one in the inspection-lodge would be as good as half a hundred. The price of that kind of cattle could not fail of falling at least ten per cent., and the insurance upon marital honour at least as much, upon the bare hint given of such an establishment in any of the Constantinople papers. But the mobbing I got at *Shoomlo,* only for taking a peep at the town from a thing they call a *minaret* (like our monument) in pursuance of invitation, has cancelled any claims

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they might have had upon me for the dinner they gave me at the *divan*, had it been better than it was.

If the idea of some of these applications should have brought a smile upon your countenance, it won't hurt you, my dear ****; nor should it hurt the principle. Your candour will prevent you from condemning a great and new invented instrument of government, because some of the purposes to which it is possible to apply it may appear useless, or trifling, or mischievous, or ridiculous. Its great excellence consists in the great strength it is capable of giving to *any* institution it may be thought proper to apply it to. If any perverse applications should ever be made of it, they will lie in this case as in others, at the doors of those who make them. Knives, however sharp, are very useful things, and, for most purposes, the sharper the more useful. I have no fear, therefore, of your wishing to forbid the use of them, because they have been sometimes employed by school-boys *to raise the devil* with, or by assassins to cut throats with.

I hope no critic of more learning than candour will do an inspection-house so much injustice as to compare it to *Dionysius' ear*. The object of that contrivance was, to know what prisoners said without their suspecting any such thing. The object of the inspection principle is directly the reverse: it is to make them not only *suspect*, but be *assured*, that whatever they do is known, even though that should not be the case. Detection is the object of the first: *prevention*, that of the latter. In the former case the ruling person is a spy; in the latter he is a monitor. The object of the first was to pry into the secret recesses of the heart; the latter, confining its attention to *overt* acts, leaves thoughts and fancies to their proper *ordinary*, the court *above*.

When I consider the extensive variety of purposes to which this principle may be applied, and the certain efficacy which, as far as I can trust my own conceptions, it promises to them all, my wonder is, not only that this plan should never have hitherto been put in practice, but how any other should ever have been thought of.

In so many edifices, as, from the time of the conquest to the present, have been built for the express purpose of safe custody, does it sound natural that, instead of placing the prisoners under the inspection of their keepers, the one class should have been lodged at one end, perhaps, of a vast building, and the other at another end?—as if the object of the establishment were, that those who wished to escape might carry on their schemes in concert, and at leisure. I should suppose the inspection principle must long ago have occurred to the ingenious, and been rejected by the judicious, could I, after all my efforts, conceive a reason for the rejection. The circular form, notwithstanding its taking demonstrably less materials than any other, may, for aught I know, on its first construction, be more expensive than one of equal dimensions in any of the ordinary forms. But this objection, which has no other source than the loose and random surmise of one who has had no experience in building, can never have held good in comparison with all the other prisons that we have, if in truth it holds good in comparison with any. Witness the massy piles of Newgate, of which the enormous, and upon the common plans by no means unnecessary expense, has been laid out in the purchase of a degree of security, not equal to that which the circular form would have given to the slightest building that could be made to hold together. In short, as often as I indulge myself in the liberty of fancying that my own notions on this head may prove conformable to other people's, I think of the old story of *Columbus* and his *egg*.

I have now set this *egg* of ours on its end:—whether it will stand fast, and bear the shocks of discussion, remains to be decided by experience. I think you will not find it stale; but its freshness is a circumstance, that may not give it an equal relish to every palate.

What would you say, if by the gradual adoption and diversified application of this single principle, you should see a new scene of things spread itself over the face of civilized society?—morals reformed, health preserved, industry invigorated, instruction diffused, public burthens lightened, economy seated as it were upon a rock, the gordian knot of the poor-laws not cut but untied—all by a simple idea in architecture?*

I am, &c.

* This plan happened not to come in time for the particular purpose it was designed for.

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POSTSCRIPT, PART I.

CONTAINING

FURTHER PARTICULARS AND ALTERATIONS RELATIVE TO THE PLAN OF CONSTRUCTION ORIGINALLY PROPOSED;

PRINCIPALLY ADAPTED TO THE PURPOSE OF A

PANOPTICON PENITENTIARY-HOUSE.*

SECTION I.

PRINCIPAL PARTICULARS.

Principal Particulars *either settled or altered, since the first hasty design, as described in Letter II. and imperfectly represented in Plate I.* See Plate II.†

1. ANNULAR WELL, or vacancy, all the way up, crowned by an uninterrupted opening *sky-light*, instead of stories of intermediate annular area to every two *stories* of cells.

2. *Cells* enlarged in depth, by throwing into them the space occupied in the first design by the *protracted partitions*, and by giving to the upper row in each pair the same depth as to the under row.

3. *Cells*, two laid into one.

4. *Cells—number of stories*, six instead of four.

5. *Chapel*, a regular one, now inserted in the centre: partly instead of the small central area; partly at the expense of the several stories of inspection-lodge.

6. Instead of three *similar* stories of *inspection-lodge*, in the two upper stories annular *inspection-galleries*, backed by the chapel-galleries, in the lowest story *annular inspection-gallery*, inclosing a *circular inspector's lodge*.

7. No *cupola*, a part inserted in the first hasty sketch, rather by way of finish, than with a view to any special use.

8. The *dead part*, viz. that part of the circuit in which there are no cells, here occupying 5-24ths of the circuit instead of 2-48ths, *i. e.* 1-24th: in height five stories out of six, instead of two out of four, and covered by a *projecting front.—N. B.* This dead part, depending in point of magnitude and disposition so much upon local and other individual *data*, could not well be settled in all its parts, and accordingly is not represented in the draught.

9. *Communications*, now partly altered, partly fixed: particularly the only thorough passage, termed the *diametrical passage*, now cut through a sunk story, and at its exit joined by a *covered way*, projected downwards from the lowermost inspection-gallery, and terminating in a central *look-out* for the inspection of the yards.

10. The form *polygonal* (a double duodecagon, or polygon of 24 sides) instead of circular.

11. Diameter——According to the present draught 120 feet (exclusive of the projecting front,) instead of 100 feet, the diameter thought of in the original imperfect sketch, with a view to local circumstances.‡

12. *Materials.—Iron* much employed, and used for the cell-galleries, for staircases, for doors, and even for pillars, chiefly hollow, instead of brick, stone, or wood.—*Plaister* proposed for the cell floors.

13. Mode of supplying the building with water: chiefly by an *annular cistern*, running round the top of the building, under the roof, immediately within the wall.

14. Mode of *warming* the building: by streams of fresh air, heated in the new way by passing through the inside of vessels, to which fire is applied on the outside; instead of stagnant air, heated by its contiguity to hollow receptacles to which fire is applied on the inside, as in the ordinary German stoves and hot-house flues.

15. *Outlets* or *external area*, settled in subordination to the inspection principle: the *covered way* a *semi-diameter* of the area, ter-

* Originally printed in 1791.

† For an explanation of the circumstances owing to which the Plates are omitted in the edition of 1791, see the Note, p. 171. The editor has been unable to obtain a copy of them.

‡ Twenty feet, the addition made to the diameter, multiplied by three, gives 60, the addition to the circumference: this divided by 24, the number of the cells, gives 2½, the addition made to each cell at the outside of the wall; *i. e.* at the extreme circumference, round which the polygon is circumscribed.

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minating in a *central look-out*, instead of encompassing the area, and being attached to the surrounding wall.

16. *Approach* and surrounding fences, now first settled, and that too in strict subordination to the same principle.

N. B.—The degree of anxiety displayed in the plan of exterior fortification there exhibited, had a more particular view to the state of things in Ireland than in England.

With relation to most of these points further elucidation will be necessary; and with regard to several of them, something in the way of justification will be expected: such will be the business of the ensuing pages.

SECTION II.

GENERAL VIEW OF THE WHOLE EDIFICE.

In a General View of the whole Building, according to its present form, three very different, though connected masses, may be distinguished.

1. THE *projecting front*, a rectangular mass, which, being designed to go towards furnishing habitation for the officers of the establishment, has little to distinguish it from a common dwelling-house.

2. The *cellular* part, including, as well that part of the circuit which is actually disposed of in cells, as the *dead part*, which, for the sake of stability, it is thought necessary to lay out in the cellular form, although, for want of light, as being covered by the front, it would not be conveniently applicable to the same use.

3. The *inspection-tower*, comprehending on one story the lowermost inspection-gallery, with the inclosed inspector's lodge; in another, the middlemost inspection-gallery, in which is inclosed the lowermost chapel-gallery, and within that again the area of the chapel;* on a third, the uppermost chapel-gallery.

The cellular mass, together with the inspection-tower inclosed within it, compose the characteristic part of the building; the projecting front forms an accidental and inessential appendage.

The whole of the characteristic part may be conceived as composed of two towers, one within the other, with the annular well between them.†

A particularity that will require to be constantly kept in mind is, that in the two polygono-cylindrical masses, the circumscribing and the inscribed, not only the numbers of the stories do not agree, the latter having but half the number of the former, but that no one story in the interior part coincides in point of level with any one story of the exterior that surrounds it. This want of coincidence is not an accidental, but a characteristic, and almost essential circumstance: since it is by being placed about midway between the floor and the ceiling of the lowermost of each pair of cells, that one floor in each story of the inspection-tower affords a perfect view of two stories in the cellular part.

Principal Dimensions of the Polygonal Part, *comprehending the* Cellular Part, *with the included* Inspection-Tower, *being the whole of what is represented in Plate II.*

WIDTHS.

Semidiameter of the area of the chapel, including the central aperture, .	15
Width of a chapel-gallery, ...	12‡
Width of an inspection-gallery,‖ .	5
Width of the annular area in the same story, and well over it, ...	7§
Width of the grated annular passage, encompassing the annular area on the sunk story, being the same width as that of the cell-galleries above, . .	4
Depth of a cell within-side, . . .	14¶
Thickness of the wall, ...	5
Total, . .	62
Add the other semidiameter, . .	62
Total diameter, .	124

Under the Floor of the Chapel.

Semidiameter of the inspector's lodge, thickness of the wall included, . .	27

* The area of the chapel cannot, perhaps, in strictness be said to form part of the same story with the lowermost chapel-gallery. The floor being several feet below the level of that of the gallery, may be looked upon as forming in that part a story by itself. But this want of exact coincidence is no more than what occurs frequently in common houses.

† By analogy, the inspection-tower might be termed the *medullary* part: the cellular part, the *cortical*.

‡ In some of the impressions of the draught, by mistake 9 feet only.

‖ In some of the impressions of the draught, the lowermost of these galleries has 3 feet of addition given to it, at the expense of the included lodge: this addition it is now proposed to take away, for the reasons given in Sect. 8.

§ In some of the impressions of the draught, by mistake 11 feet.

¶ In some of the impressions of the draught, by mistake 13 feet only. Of the four additional feet thus given to the intermediate well, one was at the expense of the cells, the three others at the expense of the chapel-galleries. It is now, however, proposed to allow it one foot, at the expense of those galleries, making at the diameter eight feet instead of seven: exclusive of the four, which, to the purpose of ventilation, may be considered as little different from so much void space, being so imperfectly occupied by the cell-galleries, constructed of open work like balconies.

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Brought over,			27	
Width of the inspection-gallery, . .			5	
			32	
Add the other semidiameter, . . .			32	
Diameter of the building at the outer circumference of the inspector's gallery in that story, ...			64	
Which is the same as in the other stories.				

Cellular Part alone.

HEIGHTS.

From the floor of the sunk story to the floor of the lowest cell level with the ground, including the thickness of the floor, ...			7	6
From the floor to the crown of the arch in each cell, . .	8	0		
Thickness of the arch at the crown, ...	1	0		
Height of the first floor of cells from the ground, including the thickness of the floor above,	9	0		
—— of the second floor, .	18	0		
—— of the third floor, . .	27	0		
—— of the fourth floor, .	36	0		
—— of the fifth floor, . .	45	0		
—— of the sixth floor, . .			54	0
From the crown of the arch on the outside to the lowest part of the slanting roof within the walls, ...	3	0		
From thence to the level of that part of the roof where the annular sky-light begins, .	5	0		
From thence to the level at which the sky-light terminates, ...	5	6		
Thickness of the roof in that part, ...	1	0		
			14	6
Total depth of the annular well,	76	0	76	0
Height of the building from the ground in the cellular part,	69	6		

Inspection Tower alone.

HEIGHTS.

From the intermediate area to a level with the floor of the lowermost story of cells, ...			7	6
Thence to the floor of the inspection-gallery, ...			4	0
From the floor of the inspection-gallery to the roof of ditto, including the thickness of the floor and roof,			8	0
Void space between the lowermost and the middlemost inspection-galleries, ...			10	3
Height of the middlemost inspection gallery, including the thickness of the floor and roof, ...			7	6
Void space between the middlemost inspection-gallery and the uppermost, ...			10	3
Height of the uppermost inspection-gallery in front, including the thickness of the floor and roof, . . .			7	6
Void space between the uppermost inspection-gallery and the uppermost part of the roof where the annular sky-light terminates, exclusive of the thickness of the roof, . .			20	0
Thickness of the roof, ...			1	0
Height from the floor of the sunk story and annular well as before, . .			76	0

Inspector's Lodge alone.

WIDTHS.

From the centre to the circumference of the central apertures in the floor and the ceiling,*	6
Of the annular space between that and the partition dividing the lodge from the surrounding gallery, being the space underneath a chapel gallery, added to that underneath the chapel area, ...	21
Total semidiameter of the inspector's lodge, ...	†27
Add the other semidiameter, . . .	27
Total diameter, ...	54

SECTION III.

ANNULAR WELL.

Annular Well, instead of Stories of Intermediate Annular Area.

How to give to the inspectors access to the prisoners in their cells? In the first design, stories of intermediate area, serving as passages, were allotted to this purpose: in number agreeing with the stories of inspection-lodge: in point of level, coinciding, as was necessary, with the lowest story of each pair of cells. Apertures, cut here and there through the uppermost of these stories of passages, were to give light and air to those below.

* The diameter here given to these apertures is the same as that given to the opening sky-light over them: but they admit of extension, as the demand for light or any other consideration may require.

† In some of the impressions of the draught but 21: the difference, 6 feet, being owing, half of it, to the three feet of addition given by mistake to the annular well, at the expense of the included inspection-tower; the other half, to the addition (now proposed to be taken back) given within that tower to the inspection-gallery in this story, at the expense of the included lodge.

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For what purpose these passages? For communication, and no other. But the more I considered, the more plainly I perceived, that for uninterrupted communication there would be no use. The first succedaneum that presented itself was a multitude of *flying staircases* of open iron-work: at last I satisfied myself, that two flights of staircases, from top to bottom, for the prisoners, and short passages joining them from the several stories of the inspection-part, would answer every purpose.* Out went accordingly the stories of intermediate area. Space took the place of matter, from the bottom of the building to the top: and thus a *well* was formed all the way up, crowned by an uninterrupted *sky-light*, as broad, and opening in as many places, as possible.

Airiness, lightsomeness, economy, and increased security, are the evident results of this simple alteration: above all things, airiness, the want of which it might not by any other means have been very easy to remove. This vacuity does service in a thousand shapes: a ditch in fortification, it is a chimney, and much more than a chimney, in ventilation. In this point of view, the distance between the particular ceiling and the general sky-light is so much added to the height of ceiling in each cell: so that instead of 6 cells, each 8 feet high and no more, we have in fact, 6 cells, one of 66 feet, another of 57, a third of 48, a fourth of 39, a fifth of 30, and the lowest not less than 21 feet.

Communication, impeded in as far as it is dangerous, is, instead of being retarded, accelerated, where it is of use. To the inspector, in his gallery, a single *pole* answers, as we shall see, the purpose of many staircases: by this simple implement, without quitting his station, he gives the prisoners egress from, and regress into, their cells. Machines, materials of work, and provisions, find a direct passage by help of a *crane*, without the tedious circuity of a staircase: whence less width of staircase may suffice. The posts at which, were iron gratings of no avail, it would be possible for a desperate prisoner to attack an inspector in his castle, are reduced to three narrow passages on each side: and these, too, crossed and guarded by doors of open-work, exposing the enemy, while they keep him at a distance.† Of all this more particularly in its place. A short hint of the several advantages could not well be omitted in speaking of the part to which they are due.

Add to these another, nor that an inconsiderable one, in point of extent and facility of *inspection*: for though there are but two stories of cells, of which an eye situated in a story of the inspecting tower can reach every part alike, yet in addition to this perfect view partial views are thus opened, from which the management may derive, as we shall see, very material assistance.

What degree of support the inspector of each story of inspection-gallery derives from the view thus acquired by his colleagues in the two other stories, may be seen by the lines described for that purpose in the cells. They are drawn as if from an eye stationed in the back part of the several inspection-galleries. The figures 1, 2, 3, mark the stories of inspection-gallery from which they are respectively drawn. When two of these lines proceed from the same cell, the letter *s* denotes that one of them, which was drawn from the height of the eye of a middle-sized man when *sitting*, and stooping to read or write—say three feet six inches; the letter *u*, that drawn from the eye of the same man standing *upright*—say five feet five inches.

From this particularity in point of *construction*, the following observations may be deduced with a view to *management*:—

1. There is no cell of which some part is not visible from every story in the inspection-tower: and in the lowermost story, not only from the inspection-gallery, but even from the included inspector's lodge.

2. The part thus visible is considerable enough, in point of room, to receive, and expose perfectly to view, a greater number of prisoners than it can ever be proposed to lodge in the same cell.

3. No prisoner can ever make any attempt upon the grating that forms the interior boundary of his cell, without being visible to every one of the three stations in the inspection-part.

4. During meal-times and at church-times, by stationing the prisoners close to the grating, two out of three inspectors may be spared.

5. The cell-galleries are, every one of them, perfectly commanded by every station in the inspection-part.

6. An attempt can scarcely, if at all, be made on a window in the third story of cells, without being visible, not only to its proper story (viz. the 2d) of the inspection-part, but likewise to the first; nor upon a window in the 4th story of cells, without being visible not only to its proper story (viz. the 2d) of the inspection-part, but likewise to the 3d. Those of the 4th story at least, as well as the two above it, are sufficiently guarded by their height; upon the supposition that the cells afford no ropes, nor materials of which ropes could be made in the compass of a night, by persons exposed constantly to the eye of a patrolling watchman.

7. To give to an inspector at any time the

* See below, Communications.

† This refers to the construction of the *dead part* of the circuit; of which, a little further on.

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same command over the cell of another inspector as over his own, there needs but an order, drawing a line of limitation in the cells in question, and confining the inhabitants within that line. So long as a prisoner keeps within it he continues visible; and the instant he ceases to be so, his very invisibility is a mark to note him by.

SECTION IV.

PROTRACTED PARTITIONS OMITTED.

Protracted Partitions omitted; or rather, taken into the Cells.

In the original design, the protracted partitions had two uses: 1. To cut off all view of distant cells; 2. To cut off converse with the cells contiguous on each side. In securing this effect, a large quantity of brick-work, and an annular space of 3 or 4 feet all round, were expended.

Upon maturer consideration, it appeared that the same effect might be equally secured by slighter and cheaper means; and the space thus sacrificed allotted to some other more necessary purpose. Views of the opposite semicircle may be intercepted by sheets of canvass filling up the intervals left by the stories of the inspection-gallery,*—view and converse, as between cells contiguous or adjacent, by barriers of the slightest nature interposed within the cells; such as a netting of wire for example, or even of packthread. The object is rather to mark the line, than to oppose a physical obstacle to the violation of it. If transgression be rendered impracticable without discovery, it is sufficient: since it is not here and there an instance that can produce any material mischief, or to the delinquent any gratification capable of paying for the danger. By this slight and flexible barrier, no room need be consumed. As well at top as at bottom, it will give place to furniture; such as a shelf, or the foot of a loom, a bedstead, or a table; and upon order given, it may be removed at any time.

When the protracted partitions were contrived, it was with a view to the assumed necessity of absolute solitude: that plan being, for reasons given below, now relinquished, neither this expedient, nor those now proposed to be substituted to it in the same intention, are any longer of the same importance.

If the interception of view can be considered as an object entitled to much attention, it can only be as between the different sexes. Of the provision made for that purpose, a full account will be found below.

* Making the circuit round the area of the chapel, and omitting the dead part, it will be found that three pieces, each in length about 70 feet, and in width, two about 5 feet each, and the third about 8½ feet, will suffice.

SECTION V.

CELLS, DOUBLE INSTEAD OF SINGLE.

The change is not a trifling one. It will not lightly be acceded to: the expediency of it will be expected to be fully and satisfactorily made out. It shall be so: by reason, by authority, and by practice. In the letters, I assumed solitude as a fundamental principle. I then copied, and I copied from recollection. I had no books. I have since read a little: I have thought more.

Not that the Panopticon system has any interest in the change. You may apply it, indeed, to mitigated seclusion, but so you may, with equal facility, to absolute solitude. Applied to the degree of mitigated seclusion here proposed, it clears the punishment of its inconveniences, and gives it the advantages that have been looked for from solitude: applied to solitude, it enables you to screw up the punishment to a degree of barbarous perfection never yet given to it in any English prison, and scarcely to be given to it by any other means.

Double cells suppose two prisoners at least in company; and admit of three, or even, in case of necessity, four; and that with much less inconvenience, as we shall see, in point of room, than would result from the putting of two into a cell designed only for one. As to any greater number, I lay it out of the question. The choice lies, it must be remembered, not betwixt solitude and crowded rooms, but betwixt absolute perpetual and universal solitude, on the one hand, and mitigated seclusion in very small assorted companies, on the other: companies, in the formation of which every regard might be paid, and naturally would be paid, to every sort of consideration by which expediency can be influenced—to age, temper, character, talents, and capabilities. Single cells throughout, that is, a number of cells equal to that of the prisoners for whose reception they are designed—cells in which, under the Panopticon discipline, they are to work, and eat, and attend Divine service, as well as sleep, and out of which, unless for the purpose of being aired and exercised, they are never to stir: suppose them doomed, or at least meant to be doomed, during the whole time of their imprisonment, to the state of unmitigated solitude above mentioned; that time, for the most part, a term of not less than seven years.

Of perfect solitude in the penitentiary discipline I know but of one use,†—the breaking

† Mr. Howard knew no other. "The intention of this," viz. *(solitary confinement)*—"the

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the spirit, as the phrase is, and subduing the contumacy of the intractable. In this quality it may be a necessary instrument; none, at any rate, can be more unexceptionable; none can be more certain in its effect.* In what instance was it ever known to fail?

But in this quality the demand for it can be but temporary. What it does, if it does anything, it does quickly—better, according to Mr. Howard, in two or three days, than in more.† Why, then, at an immense expense set up a perpetual establishment for the sake of so transitory a use?

In the character of a permanent article of discipline, continued throughout the whole of the confinement, if it were thought necessary on any account, it must be for one or other of two purposes:—1. To prevent the spread of mischievous instruction; or, 2. To prevent conspiracies for the purpose of escape.

It is not necessary for either purpose: I mean always in contradistinction to the mitigated plan of seclusion, which gives to each man, but one, or at most two companions: I. Not for the former. In the cases in which mischievous inclinations have been apprehended, and in which a plan of solitude, more or less steadily adhered to, has been employed or thought of by way of remedy, the following circumstances have generally concurred:—1. The *multitude* of the prisoners collected together *large* and indeterminate; 2. The *composition* of that multitude *not* capable of being regulated by any power of *selection*; 3. The whole multitude left together, during the whole, or almost the whole of the four-and-twenty hours, *without inspection* or controul, and that in a narrow space, where no one, however desirous, could escape from the conversation of any other; 4. All of them at liberty, without any other check than that of poverty, to supply themselves to any excess with the means of intoxication; 5. A part, more or less considerable, of that number, about to be *turned loose again* upon the public in a *short* time, with the lessons of mischief fresh in their ears, and ready at the first opportunity to apply the theory to practice. Under the arrangement to which, upon maturer consideration, I have given the preference in comparison with the first hasty conception of perpetual solitude, not one of the above circumstances has place. The number of the prisoners proposed to be put together is very small; in general, but two, at the utmost not more than four: the composition of these little groupes dependent upon the ruling powers in the first instance, and capable of being varied every moment, upon any the slightest intimation which experience or even suspicion can afford: every groupe, and every individual in it, exposed more or less to the scrutiny of an inspecting eye during every moment of their continuance there: all means of intoxication for ever out of reach: the degree of seclusion determined upon, capable, whatever it be, of being—thanks to the all-efficient power of the Panopticon principle—maintained inviolate, while every plan of solitude yet attempted has been broken in upon, and its purpose in great measure frustrated, by occasional associations: and the pernicious instruction, should any such be communicated, not capable, were it to find a learner ever so ripe for it, of being applied to practice for many years to come.

If from reason we turn to example, an instance where the plan of perpetual, total, and universal solitude has been adopted and steadily adhered to, will not anywhere, I believe, be found. Either it has not been aimed at, or if aimed at in principle, it has been relented from in practice.

In the Wymondham Penitentiary-House, each prisoner, it is true, has a separate cell to sleep in: it is, however, only upon occa-

intention of this," says he, in Account of Lazarettos, p. 169, "I mean by day as well as by night, is either to reclaim the most atrocious and daring criminals; to punish the refractory for crimes committed in prison; or to make a strong impression in a short time, upon thoughtless and irregular young persons, as faulty apprentices and the like. It should therefore be considered by those who are ready to commit for a long term petty offenders to absolute solitude, that such a state is more than human nature can bear, without the hazard of distraction or despair. The beneficial effects of such a punishment are speedy, proceeding from the horror of a vicious person left entirely to his own reflections. This may wear off by long continuance, and a sullen insensibility may succeed."

And in another note, p. 192—"A short term would probably do more to effect a reformation than three or four months' confinement; as it is generally found that in the first two or three days prisoners seem to have their minds most affected and penitent."

Of these notes, the former, it is true, is prefaced with a "wish that all prisoners had separate rooms; for hours of thoughtfulness and reflection," says he, "are necessary." But by separate rooms, all that he had in view was rooms different from the crowded rooms he had been speaking of in the text. In the latter, it is true, the sort of thoughtfulness and reflection he speaks of will with difficulty find place. The busy scenes that pass in crowds keep the mind in a state of fermentation and confusion, that leaves little leisure for the admission of other thoughts. Far otherwise is it in those small societies—societies composed of two or three only, which not having fallen under his observation, do not appear on this occasion to have been in his view. Unapt to give rise to obstreperous mirth, they are peculiarly favourable to that sort of calm reflection which is the concomitant of confidential intercourse.

* Darkness and fasting, one or both, must be added, where it is thought necessary that the effect should be speedily produced: as in the case of English juries.

† Account of Lazarettos, p. 192.

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sion* that he works there. If he does not work there, he must work, and unquestionably does work, in company, viz. in the work-room of twenty feet four inches by ten feet,† which was not destined for a few. As a preservative against mischievous instruction, what, then, at those times, that is, throughout the day, becomes of solitude?

In the Gloucester Penitentiary-House, as well as in the other Gloucester prisons, solitude, under the two modifications there adopted, viz. with and without the concomitant of darkness, is, with great propriety, and in conformity to the principle I am contending for, "directed merely as a punishment for refractory prisoners, and to enforce the discipline of the prison."

In the penitentiary-house, indeed, it is provided, that during the hours of rest, the prisoners shall be "*kept entirely separate — in separate cells.*" So much for the night. How is it all day long? — "*During the hours of labour,*" they are to be "*kept separate.*" — How? — absolutely? No: but only "*as far as the nature of the employment will admit.*"

What follows immediately after, I do not perfectly comprehend: — "When the nature of the employment may require *two* persons to work together," (it does not say *two persons or more*) "the taskmasters, or assistant, (it is said) shall be present to attend to the behaviour of such offenders, who shall not continue together except during such hours of labour." How is this? Not more than two persons ever to work together? nor even two without a taskmaster, or his assistant, to attend them? Upon any idea of economy, can this be looked upon as practicable? One man at £50, or £30, or £25 a-year,‡ to do nothing but look on, for every two men who are expected to work? The governor is allowed, I observe, for but one subordinate of each of those descriptions. Are there, then, to be but three pair of prisoners on the whole establishment, to whom the indulgence of so much as a single companion is to be allowed? are all the rest to remain in solitude for the want of an attendant to each pair? — This cannot be. By *two*, then, we are to understand *two or more*: in short, here, as at Wymondham, there are working-rooms in common, in which none are to be without an inspector stationed in some part of the room. — But in this case, too, what becomes of solitude?

If the benefits expected from solitude in the character of a preservative, were not given up by this relaxation, they would be by another. The following I observe prescribed, as one of the four degrees of punishment "to be applied in the discipline of *all* the prisons," the Penitentiary prison, therefore, among the rest. The prisoner, though "on working-days confined to his cell, except during the times of airing,"‖ and though "removed *singly* to the chapel," is, "provided his or her behaviour be orderly or decent," to be "allowed on Sundays, to air in the courts, in the society of his or her class."§ Under this indulgence, too, what becomes of the *antiseptic* regimen? May not the same person who opens a school of corruption as soon as the keeper's back is turned, be orderly and decent during his presence? may not there be *eye-prisoners*, as well as eye-servants? cannot the arts of housebreaking and pilfering be taught on Sundays, as well as on week-days? cannot they be taught quietly, and in a low voice?

So much as to evil instruction. Now as to safe custody. Upon the Panopticon plan, at least, absolute solitude is equally unnecessary to this purpose. Towards effecting an escape, what can two or three do more than one, confined as they are by iron grates while they are within the prison, and by walls when they are without? and, in either case, never out of the eye of an inspector, who is armed and out of reach of attack, and within reach of whatever assistance he can desire? and this, too, as we shall see, but a part of the securities with which the system is armed? for every thing cannot be said at once, nor repeated at each sentence.

Upon the common plans, absolute solitude while the prisoners were out of sight might, for aught I can say, be a necessary precaution: at least it cannot be said to be an useless one. In the course of sixteen hours, a good deal might be done by two or three persons, steeled against danger, reckoning life as nothing, and secure of not being observed.

If perpetual and unremitted solitude is not necessary either to prevent the spread of mischievous instruction, or to prevent escapes, to what other purpose can it be either necessary, or of use? To reformation? but that you have already, either without any solitude, or by the help of a short course of it. What further proof would you wish for? what further proof can human eyes have, of such a change, beyond quietness, silence, and obedience?

To the purpose of example? The effect in the way of example, the effect of the spectacle, receives little addition from the protracted duration of the term.

* *When necessary.* See Sir T. Beevor's Letters in Annual Register for 1786, Let. I.

† Ibid. Let. III.

‡ The salaries allowed by these regulations to a taskmaster, turnkey, and assistant turnkey. Ib. Part I. p. 18.

‖ As to *airing*, a plan for that purpose will be found below, which does not require the slightest infringement upon whatever plan of seclusion may be fixed upon as most eligible.

§ Ibid. Part II. p. 10.

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Are you afraid the situation should not be made uncomfortable enough to render it ineligible? There are ways enough in the world of making men miserable, without this expensive one: nor, if their situation in such a place were made the best of, is there any great danger of their finding themselves too much at their ease. If you must torment them, do it in a way in which somebody may be a gainer by it. Sooner than rob them of all society, I would pinch them at their meals.

But solitude, when it ceases to be necessary, becomes worse than useless. Mr. Howard has shewn how. It is productive of gloomy despondency, or sullen insensibility. What better can be the result, when a vacant mind is left for months, or years, to prey upon itself.

This is not all. Making this lavish use of solitude is expending an useful instrument of discipline in waste. Not that of *punishments*, or even a proper variety of punishments, there can ever be a dearth: I mean, of what is usually in view under that name — suffering employed in a quantity predetermined, after an offence long past. But of instruments of *compulsion*, such as will bear scrutiny, there is no such great abundance.

Starving thus employed, is open to suspicion, and may not always be practicable, without prejudice to health. Acute applications, such as *whipping* or *beating*, are open to abuse, and still more to suspicion of abuse. Applied in this way, they would be execrated under the name of *torture*. Solitude thus applied, especially if accompanied with darkness and low diet, is torture in effect, without being obnoxious to the name.

Compared to that mitigated degree of seclusion which admits of allowing two or three to a cell, it is unthrifty in a more literal sense. Pecuniary economy must be sacrificed to it in a thousand shapes: — 1. It enhances the expense of building; 2. It consumes room; 3. It cramps the choice of trades; 4. It cramps industry in any trade.

1. It enhances the expense of building. Admit of double cells instead of single, and observe the saving. Half the number of the partition-walls; a considerable part of the expense of warming; half that of lighting: half the apparatus, whatever it be, dedicated to cleanliness; and the expense of water-closets, upon the most perfect plan, need the less be grudged.

2. It consumes room: 1. Admit of double cells, you gain to the purpose of stowage and manufacture, the space occupied by the partition-walls you have thrown out; 2. It precludes the saving that may be made in double cells, by putting together two sorts of workmen, one of whom required more room than the average allowance, the other less; a weaver, for example, and a shoemaker.

3. It cramps the choice of employments: 1. It excludes all such as require more room than you would think fit to allow to your single cell; 2. It excludes all such as require two or more to work in the same apartment.*

4. It cramps industry in any employment: 1. It precludes an experienced workman from having boys given to him for apprentices; 2. Nor probably would the same quantity of work be done by two persons in a state of solitude, as would be done by the same two persons in a state of society, at least under the influence of the inspection principle. Who does not know the influence that the state of the spirits has upon the quantity of the work? †

Sequestered society is favourable to friendship, the sister of the virtues. Should the comrades agree, a firm and innocent attachment will be the natural fruit of so intimate a society, and so long an union.

Each cell is an island: — the inhabitants, shipwrecked mariners, cast ashore upon it by the adverse blasts of fortune: partners in affliction, indebted to each other for whatever share they are permitted to enjoy of society, the greatest of all comforts.

Should disagreement intervene, how easy will separation be! and what should hinder it? Should the mischief be the result of ill-nature or turbulence of one alone, the re-

*. I do not pretend to say, that even in single cells employments would be to seek; or that there is any reason to strain a point for the sake of admitting employments that require an extraordinary measure of room, as if the profitableness of employments were in uniform proportion to the quantity of room they required. I would not, therefore, be at a great expense in building, for the vague chance of giving admittance to trades, which by their difference in point of profitableness might do more than pay for the difference in point of expense in building. What I said in the letters I say still. All I mean here is, that if a latitude in that article can be obtained without any additional expense, the advantage ought not to be foregone.

† True it is, that two boys, or two idle men, if put together without motives for working, would be apt enough to play or lounge the whole time, and not work at all. True it is also, that after having had experience for a certain time of absolute solitude, debarred from all means of employment, the most arrant idler that ever lived would be apt to fly to almost any employment as a relief. But the question here is, not between a recluse without the means either of work or play, and two idlers possessing the means of play without the motives to work, but between one person in solitude, and two others in society, neither the one nor the two having the means of play, but, with regard to work, all having as well the motives as the means.

What more proverbial than the briskness of the cobbler's work, and the cheerfulness of his note? But where would be his cheerfulness without the amusive spectacle of the sort of society afforded him by the flux and reflux of the passing throng?

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medy is at hand: — consign him to solitude till tamed; take from him the blessing, till he has learned to know its value; punish him in the faculty he has abused.

A fund of society will thus be laid up for them against the happy period which is to restore them to the world. A difficulty will thus be obviated which has been remarked as one of the most unfortunate concomitants of this mode of punishment, and as having but too powerful a tendency to replunge them into the same abandoned courses of life which brought them to it before. Quitting the school of adversity, they will be to each other as old school-fellows, who had been through the school together, always in the same class.

Let us keep clear of mistakes on all sides. There are four distinctions we should be careful to observe in regard to solitude:—One is, between the utility of it in the character of a temporary instrument applicable to a temporary purpose, and the necessity of it, in the character of a permanent ingredient in the system of discipline. Another is, between the peculiar effects of solitude, and the advantages which are equally obtainable by means of sequestered society, in small assorted companies. A third is, between the effects of such associations, under the common plan and under the all-preservative influence of the inspection principle.

A fourth is, between the duration the solitary discipline is capable of requiring in a penitentiary-house, and that which it may possibly be of use to give to it in a house of correction. It may be longer in the latter.* Why? Because, in a penitentiary-house, all it can be wanted for is to produce immediate submission: for as to reformation and change of character, years are remaining for that task: the offender is not returned from thence into unlimited society. In a house of correction, the term being so much shorter, the remedy must be so much the more powerful. If the reformation of the offender is not completed in his solitary cell, there is no other place for it to be continued in; for from thence he is returned to society at large.†

One thing is good for physic, another thing for food? Would you keep a man upon bark or antimony?

Rejecting, then, the idea of absolute solitude, I lay two of the cells proposed in the original draught into one. Two, accordingly, is the number I consider as forming the *ordinary complement* of the double cell thus formed: *three*, if three are anywhere to be admitted, I style a *super-complement*: *four*, a *double complement*.

The degree of extensibility thus given to the establishment seems a very considerable advantage: the number is not rigorously confined to the measure originally allotted to it: provision is made for the fluctuation and uncertainty naturally incident to the number of inhabitants in such a house. Though two should be deemed the properest complement for a general one, even so considerable an one as four, especially if not universal, does not seem to threaten any formidable inconvenience. As to safe custody and good order, four is not such a number as can well be deemed unmanageable: if it were, how would so many more be managed all day long in the work-shops, and that without the benefit of invisible inspection, as on the common plans? As to room, four would have much more in one of these double cells, than two would have in a single cell formed by the division of such a double cell into equal parts. A partition, in certain cases, excludes from use a much greater space than that which it covers.‡

Under this arrangement, solitude, in its character of a temporary instrument, is by no means laid aside. On the contrary, it is made applicable to a greater, indeed to an almost unlimited extent, and, what is more, without any additional expense. Two, I call, as before, the *ordinary complement* for these double cells. Conceive the whole number of the cells provided with their ordinary complement: to consign a delinquent to solitude, there needs no more than to deprive him of his companion, and by transferring the companion to another cell, give that one other cell a *super-complement*. In this way, by only giving to half the number of cells a super-complement, half the number of prisoners might be consigned to solitude at once: a multitude of solitaries beyond comparison greater than what is provided for in any prison in which solitude is not meant to be the

* Though even there not a long one. Hear Mr. Howard, in a note before referred to:—"In all manufacturing towns," says he, p. 192, "it would be proper to have solitary cells for the confinement of faulty apprentices and servants for *a few days*, where they should be constrained to work, and have no visitors, unless clergymen: for a short term would probably do more to effect a reformation, than three or four months' confinement; as it is generally found that in the first two or three days prisoners seem to have their minds most affected and penitent."

† I speak with a view to the common plans. In a panopticon house of correction, beginning, where necessary, with a very short course of solitude, I would allot the rest of the term to a state of mitigated seclusion. But in many cases, where a long term is prescribed without distinction or thought about the discipline that will be pursued, the short course of solitude would be sufficient of itself.

‡ Thus, in a room of twelve feet wide, you might join lengthways three tables of four feet in length each: divide the room into two equal rooms by a partition, you can place but two such tables in the same direction, though the partition be but a lath.

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constant state of the whole. Even supposing the cells universally provided with a super-complement, give two-thirds of them a double complement, and you may still consign to solitude one-third of their inhabitants at the same time: and so, in case of an universal double complement, one quarter, upon no worse terms than the putting five persons into a space, which, in the ordinary way of providing for the inferior classes, is often made to hold a greater number without any very decided inconvenience.

In estimating the effects of putting two or three or four prisoners together (all under inspection, it must be remembered, all the while) the advantage of grouping them at the discretion of the inspector must not be overlooked. Very inattentive indeed must he have been to this capital part of his business, if in a very short time the character of every individual among them be not known to him as much as is material to his purpose. He will, of course, sort them in such a manner as that they may be checks upon one another, not assistants, with regard to any forbidden enterprise.

Let us not be imposed upon by sounds: let not the frightful name of *felon* bereave us of the faculty of discrimination. Even antecedently to the time within which the reformatory powers of the institution can be expected to have had their effect, there will be perhaps no very considerable part of the whole number, whose characters need inspire much more apprehension than would be justified by an equal number of men taken at large. It is a too common, though natural error to affix to this odious name, whatsoever difference of character may accompany it, one indistinguishing idea of profligacy and violence. But the number of the persons guilty of crimes of violence, such as robbery, the only sorts of crimes which in such an establishment can be productive of any serious mischief, bear, comparatively speaking, but a small proportion to the whole. Those whose offences consist in acts of timid iniquity, such as thieves and sharpers, even though trained to the practice as to a profession, are formidable, not to the peace of the establishment, but only in the capacity of instructors to the rest; while the qualities of perhaps the major part, whose criminality is confined to the having yielded for once to the momentary impulse of some transient temptation, are such as afford little or no danger in any shape, more than would be afforded by any equal number of persons in the same state of poverty and coercion taken at large. They are like those on whom the tower of Siloam fell — distinguished from many of their neighbours more by suffering than by guilt. Drunkenness, it is to be remembered, the most inexhaustible and most contagious source of all corruptions, is here altogether out of the question. Intoxication cannot be taught, where there is nothing (for this I take for granted) wherewith a man can be intoxicated.*

SECTION VI.

DEAD-PART.

It will be necessary, on a variety of accounts, to reserve some part of the circuit of the building for other purposes than that of being disposed of into cells. A chapel, a part of the establishment for which a place must be found somewhere, occupies upon the present plan a considerable portion of the inspection-tower. Even the whole of that circle, were there to be no chapel, would not suffice for the lodgment of all the persons for whom lodgment would be necessary. There must be a chaplain, a surgeon, and a matron; especially, if besides male, there should be female prisoners, which in a building of this kind there may be, as we shall see, without inconvenience.† Should the establishment not be of sufficient magnitude to call upon the chaplain and the surgeon for the whole of their time, and to give a complete lodgment to those officers and their families, some sort of separate apartment they must still have, the surgeon at least, to occupy while they are there.

To such an establishment, not only a governor, but a sub-governor, will probably be requisite: and for the sake of giving an inspecting eye to the approach without, as well as for other purposes, it will be necessary, as we shall see, that the former, and convenient that the latter at least, should have an apartment fronting and looking out that way. And for the lodgment of the governor, at least, there will be required a space sufficient for a style of living, equal or approaching to that of a gentleman.‡

* In showing that absolute solitude is not an essential part, nor indeed any part of the penitentiary system, I had forgot the original Penitentiary Act, 19 Geo. III. c. 74; under which act, solitude extends neither to "labour," nor "devotion," nor "meals," nor "airing." See Section 33.

† See the Section on the separation of the sexes.

‡ To a person of this description, or not much below it, must the provision made in point of room be suited, upon whatever plan the governor is to find an inducement to take upon him the office. Upon the plan of payment by salary, a man who in point of education and responsibility had not some pretensions to be considered as upon that footing, would hardly be entrusted with a concern of such magnitude and importance. Upon the contract plan recommended in the letters (See Letter 9th,) a man who was not of sufficient responsibility and account to require provision to be made for him in the way of lodg-

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There must therefore be some part of the building, over and above the central, provided for the lodgment of these several sorts of curators, and consequently not like the rest, disposed of in the form of cells. The part of the circuit thus sacrificed and blocked up, as we shall see, by a projecting front, is what I call the *dead-part*.*

To take from the cells the whole of the space thus meant to be employed, would absorb a greater part of the circuit than would be necessary, and thus make an uneconomical diminution in the number of prisoners capable of being provided for. To obviate this inconvenience, in a building of 120 feet diameter, which, were the whole of it disposed into cells, would, by having 24 double cells in a story, and six such stories, contain 288 prisoners, I take, for supposition's sake, for the dead part, a space no more than equal to five such cells.

To obtain what further room may be requisite, and that without any further prejudice to the number of the cells, I add a quadrangular front, projecting, say for instance 20 feet, reckoning from a tangent to the circle. This, with the help of the space included by a perpendicular drawn from such tangent to the last of the cells thus sacrificed on each side, would form a considerable projection, extending in front about 73 feet.† By this means, the officers in question might all of them possess some sort of communication with the exterior approach, while the back part of the space thus appropriated would give them communication with and inspection into the part allotted to the prisoners, and, to such of them as required to be stationed in the heart of the building, access to their common lodgment in that place.

The front, thus formed, would not however require to be carried up to the utmost height of a building so lofty as the circular part, viz. upon the present plan about 68 feet, roof included. Prisoners, as their occasion to ascend and descend recurs, as we shall see, at very few and stated periods, may be lodged at almost any height, without sensible inconvenience;‡ but this is not equally the case with members of families in a state of liberty. The ceilings, though higher than those of the cells (which are 8 feet in the clear,) would not require to be so lofty as the distance from floor to floor in the inspection part; a number of stories, though not so great as six, yet greater than three, might therefore be thus allotted. To dispose of the surplus to advantage, I omit a height at top, equal to and level with that of the uppermost story of cells. The corresponding part of the circuit of cells, comprehending a space equal to that of five of these double cells, is thus restored to the light, and free to be converted into cells.‖ This part, or any of the cells composing it, may answer upon occasion the purpose of *an infirmary*.

It possesses in this view a peculiar advantage: The front may have a flat roof, which, being raised to the level of the floor, or the bottom of the windows of this infirmary part,

ment upon a similar footing, would hardly be accepted of. In the former case, the governor would require a master manufacturer, or taskmaster, under him, to ease him of the most irksome and laborious part of the details, and occasionally of the whole, in case of sickness or necessary absence. And in the latter case, were a master manufacturer to be the contractor, while his own attention was principally employed in turning the establishment to account in the way of profit, he would find it necessary to have under him a man of trust, in the character of keeper, for the purpose of superintending the government of the prison, and paying a more particular attention than the occupations of the principal could admit of his paying to the great objects of safe custody and good order.

* A wall, in contradistinction to erections with windows in them, is commonly called a *dead wall*.

† This part could not be delineated in the draught Plate II., nor, consequently, the dead-part distinguished from the rest. The disposition of these two parts must be governed in a considerable degree by local circumstances, and in its details is not essential to the composition of the building. The outline of it is, however, represented in Plate III.

‡ This would be, exclusive of the roof, 54 feet, being the aggregate height of the six cells; the floor of the lowest story of cells being supposed level with the ground; that is, even with the ground-floor of the projecting front upon the same level. But it will probably be found convenient, as we shall see, to raise the ground-floor of the front to a level with that of the lowermost story of the inspection part, the floor of which must be 4½ above that of the lowermost story of cells; and to put under the cells a sunk floor, running all around, which may be about 7½ feet lower than that of the cells, and consequently about 12 lower than that of the lowermost story of the inspection part. In that case, if the ground is at the same height before the front as all round the cells, there must be steps from it to the height of 4½ feet (say 9 steps 6 inches each) to reach the ground-floor: which will reduce to 49½ feet the height from the ground-floor to the ceiling of the highest story of cells; and to 43½ that from the same ground-floor to the windows of the same story of cells: at which level the projection must terminate, in order to afford by its roof a terrace for the Infirmary, in manner here proposed.

This want of coincidence between the floors of the internal part and those of the external, in other words, between the inspection part and the cellular (a circumstance necessary to give each floor of the former the command of two floors of the latter,) introduces a degree of intricacy which affects every conception that can be formed, and every account that can be given, of almost any part of this unexampled structure.

‖ It may possibly, however, be found eligible to sacrifice one of these cells, viz. the centre one, to let in light by a sky-light for the staircase for chapel visitors. See Sect. 12, *Communications — Staircases*.

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and covered with lead or copper, will form a terrace, on which convalescents, though incapable of the fatigue of descending and re-ascending, may take the air. A space of 73 feet in front, and in width where narrowest, (viz. at its junction with the circle,) 20 feet, and where widest (viz. at the furthest part from the circle,) near 32 feet, would afford very convenient room for this purpose; and the separation between the males and females might here likewise, if thought necessary, be kept up by a partition wall cutting the terrace in the middle.

A more convenient infirmary could scarce be wished for. The only expense attending it, is the difference between that of a flat and that of an ordinary roof for the quadrangular projection over which it looks; and even this difference is not an essential one. On the ordinary plans, while there are no sick, the infirmary is vacant and useless. Such need not be the case here. Guarded and watched in the same manner, the infirmary cells are as fit for the reception of prisoners in health as any other cells. When the establishment is in this state of repletion, suppose an infirmary cell wanted for a sick person, it is but dismissing its former inhabitant, or inhabitants, to an ordinary cell or cells, upon the principle already mentioned.

The part thus denominated the dead-part, would be very far from lost. It would afford room for many necessary articles in the composition of the building. Out of it ought to be taken:—

1. Staircases for the prisoners and inspectors; for which, see the head of Communications.
2. Entrance and staircases for the chapel visitors; for which, also see the head of Communications.
3. Passage and staircase to the inspector's lodge; for which, see the same title.
4. Vestry for the chaplain.
5. Organ and organ-loft.
6. Clock-house and belfry.

SECTION VII.

CHAPEL.

*Chapel Introduced.**

THE necessity of a chapel to a penitentiary-house, is a point rather to be assumed than argued. Under an established church of any persuasion, a system of penitence without the means of regular devotion, would be a downright solecism. If religious instruction and exercise be not necessary to the worst, and generally the most ignorant of sinners, to whom else can they be other than superfluous?

This instruction, where then shall they be placed to receive it? Nowhere better than where they are. There they are in a state of continued safe custody; and there they are without any additional expense. It remains only to place the chaplain; and where the chaplain is, there is the chapel. A speaker cannot be distinctly heard more than a very few feet behind the spot he speaks from.† The congregation being placed in a circle, the situation, therefore, of the chaplain should be, not in the centre of that circle, but as near as may be to that part which is behind him, and, consequently, at the greatest distance from that part of it to which he turns his face.

But between the centre of the inspection-tower all round, and the intermediate well, there must be, at any rate, whatever use it may be put to, a very considerable space. What, then, shall be done with it? It cannot be employed as a warehouse consistently with the sanctity of its destination; nor even independently of that consideration, since, if thus filled up, it would intercept both sight and voice. Even if divine service were out of the question, it is only towards the centre that this part could be employed for stowage, without obstructing inspection as much as in the other case it would devotion; nor can it, even in that part, be so employed, without narrowing in proportion the inspector's range, and protruding his walk to a longer and longer circuit. What, then, shall we do with this vacuity? Fill it with company, if company can be induced to come. Why not, as well as to the Asylum, the Magdalen, and the Lock Hospital, in London? The scene would be more picturesque; the occasion not less interesting and affecting. The prospect of contributions that might be collected here as there, will bind the manager to the observance of every rule that can contribute to keep the establishment in a state of exemplary neatness and cleanliness, while the profit of them will pay him for the expense and trouble. Building, furniture, apparel, persons, every thing, must be kept as nice as a Dutch house. The smallest degree of ill scent would be fatal to this part of his enterprise. To give it success, prejudices indeed would be to be surmounted; but by experience — continued and uninterrupted experience — even prejudice may be overcome.

* The chapel, not being a characteristic part of the design, will be sufficiently understood from the draught, without any particular explanation. For the whole detail of this part, I am indebted to my professional adviser, Mr. Revely, of Great Titchfield Street, Marybone, whose beautiful and correct drawings of views in the Levant have been so much admired by the dilettanti in Grecian and Egyptian antiquities.

† I found this by experiments made on purpose in churches. See also Saunders on Theatres.

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The affluence of visitors, while it secured cleanliness, and its concomitants healthiness and good order, would keep up a system of gratuitous inspection, capable of itself of awing the keeper into good conduct, even if he were not paid for it: and the opposite impulses of hope and fear would thus contribute to ensure perfection to the management, and keep the conduct of the manager wound up to the highest pitch of duty. Add to this the benefit of the example, and of the comments that would be made on it by learned and religious lips: these seeds of virtue, instead of being buried in obscurity, as in other improved prisons, would thus be disseminated far and wide.

Whatever profit, if any, the contractor could make out of this part of the plan, why grudge it him? why to his establishment, more than to any of those just mentioned? Not a penny of it but would be a bounty upon good management, and a security against abuse.

If the furniture and decoration of the chapel would require some expense, though very little decoration would be requisite, a saving, on the other hand, results from the degree of openness which such a destination suggested and rendered necessary. On the original plan, the whole circuit of the central part, then appropriated solely to inspection, was to have been filled with glass: on the present plan, which lays this part open in different places, to the amount of at least half its height, that expensive material is proportionably saved.

On the present plan, it will be observed, that three stories of cells only, viz. the second, third, and fifth from the top, enjoy an uninterrupted view of the minister.* That the inhabitants of the other stories of cells may have participation of the same benefit, it will be necessary they should be introduced, for the occasion, into or in front of such of the cells as are in a situation to enjoy it. This might be effected, and that with the greatest ease, were the whole establishment to receive even a *double complement*.

The two parties, composed of the fixed inhabitants of each cell on the one hand, and the strangers imported from a distant cell on the other, might be stationed either in one continued row in the front of the cell-galleries, or the one party in that line, and the other immediately within the cell-grating. In neither case need the law of seclusion be suffered to be infringed by converse: both parties are alike awed to silence by an invisible eye—invisible not only to the prisoners in front, but to the company behind: not only the person of each inspector, but his very station, being perfectly concealed from every station in the chapel.†

* In some impressions of the draught, the minister's station, and, consequently, the views and want of views that result from it, are not represented: but they will readily be conceived.

† All this may be very well, said an intelligent friend, in the way of *example*:—but how stands it upon the footing of *reformation*? Might it not have ultimately a corruptive effect upon the persons thus exhibited,—shaming them, indeed, and distressing them at first, but by degrees hardening them, and at length rendering them insensible? Would it not, in short, to this purpose, be a sort of perpetual pillory?

To this I answer—

1. That, of the two, example and reformation, example is the greatest object; and that in the proportion of the number of the yet innocent to that of the convicted guilty.

2. That the offences for which persons are subjected to this punishment are deemed of a deeper dye, and as such to require a punishment more severe than that even of those who are consigned to the pillory.

3. That at their trials there is not one of them but must have been exhibited in a manner equally public, and in circumstances reflecting a much greater measure of humiliation and shame: with this difference too, that on that occasion each person is exhibited singly, and the eyes of the whole audience are fixed upon him alone; that he is to speak as well as to hear, and stands forth in effect the sole hero of the melancholy drama: whereas, on an exhibition like that here proposed, the attention of the spectators, being divided among so many, scarcely attaches individually upon any one. Besides that upon his trial a man is held forth to view with the marks of guilt fresh upon his head: whereas at the remote period in question he does not appear till a progress more or less considerable may be presumed to have been made in the career of penitence, and the idea of guilt has been covered by expiation.

Should these answers be thought not to have disproved the mischief, nothing can be simpler than the remedy. A mask affords it at once. Guilt will thus be pilloried in the abstract, without the exposure of the guilty. With regard to the sufferer, the sting of shame will be sheathed, and with regard to the spectators, the salutary impression, instead of being weakened, will be heightened, by this imagery. The scene of devotion will be decorated by—why mince the word?—by a masquerade: a masquerade, indeed, but of what kind? not a gay and dangerous, but a serious, affecting, and instructive one. A Spanish *auto-da-fé* has still more in it of the theatre:—and what is the objection there? That the spectacle is light or ludicrous? No: but rather that it is too serious and too horrible.

This, it is to be noted, is the only occasion on which their eyes will have to encounter the public eye. At all other times, be their visitors ever so numerous, there will be no consciousness of being seen, consequently no ground for the insensibility which might be apprehended from the habit of such consciousness.

Where there is patience to discriminate, the worst institutions may afford a hint that may be of use. I would not turn my back upon reason and utility, though I found them in the Star-chamber or the Inquisition. The authors of the latter institution, in particular, whatever enormities and absurdities may be laid to their charge, must at least be allowed to have had some knowledge of *stage effect*. Unjust as was their penal

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SECTION VIII.

INSPECTION-GALLERIES AND LODGE.

In the three stories of the inspection-tower, annular inspection-galleries, low and narrow, surrounding in the lowermost story a circular inspection-lodge; instead of three stories of inspection-lodge, all circular, and in height filling up the whole space all the way up.*

Two desiderata had been aimed at in the contrivance of the inspector's stations: 1. The unbounded faculty of seeing without being seen, and that as well while moving to and fro, as while sitting or standing still: 2. The capacity of receiving in the same place visitors who should be in the same predicament.

The second of these objects is not to be dispensed with. If the governor or sub-governor cannot, for the purposes of his business, receive company while he remains in this station, he must, as often as he receives them, quit not only the central part, but the whole circle altogether, leaving his place in the inspection part to be supplied by somebody on purpose. Hence, on the one hand, a relaxation of the inspective force: on the other, an increase in the expense of management.

Suppose it possible, as I conceive it will be found, for the inspector's invisibility to be preserved, upon condition of giving up that of the visitors, would the former advantage be sufficient without the latter? Not absolutely: for confederates, as the discrimination could not well be made, might gain entrance in numbers at a time, and while one was occupying the attention of the inspector, others might by signs concert enterprises of mischief or escape with the prisoners in their cells. Such, at least, might be the apprehension entertained by some people—at least upon the face of this single supposition; though to one whose conception should have embraced the whole system of safeguard and defence, the danger would, I think, hardly appear formidable enough to warrant the incurring any expense, or sacrificing any advantage.

Upon the first crude conception, as stated in the Letters, my hope had been, that by the help of blinds and screens, the faculty of invisible inspection might have been enjoyed in perfection by the whole number of persons occupying the central part, wherever they were placed in it, and whether in motion or at rest. I am now assured, and I fear with truth, that these expectations were in some respects too sanguine. I mean, as to what concerns ideal and absolute perfection: at the same time that for real service, their completion, I trust, will not be found to have sustained any material abatement.

Were I to persist in endeavouring to give this property of invisibility with regard to the cells, as well to the person of the inspector as to every part of the large circle in which I place him, and to every object in it, his situation would stand exposed, I am assured, to this dilemma: if he has light enough to do any business, he will be seen, whatever I can do, from the cells: if there is not light enough there for him to be seen from the cells, there will not be light enough to enable him to do his business.

The difficulty would not be removed, even though the chapel part in the centre were thrown out, and the inspector's apartment extended so as to swallow up that central part, and occupy the whole circle. My expedient of diametrical screens, or partitions crossing each other at right angles, would not answer the purpose:† if they extended all the way from the circumference to the centre, leaving no vacuity at that part, they would divide the whole circle into separate quadrants: a man could be in but one of these quadrants at a time, and while he was in that one he could see nothing of the cells corresponding to the others. Stationed exactly in the centre, he would see indeed, but he could at the same time be seen from, all the cells at once. No space can ever be so exactly closed as to exclude the light, by any living figure.

Supposing the apertures I had contrived in the screens instead of doors capable of answering the purpose, they would leave to the

system in its application, and barbarous in its degree, the skill they displayed in making the most of it in point of impression, their solemn processions, their emblematic dresses, their terrific scenery, deserve rather to be admired and imitated than condemned.

Nihil ex scenâ, says Lord Bacon, speaking of procedure in the civil branch of the law: *Multum ex scenâ*, I will venture to say, speaking of the penal. The disagreement is but verbal: *Scena*, in the language of the noble philosopher, means *lying*: in mine, *scena* is but *scenery*. To say, *Multum ex scenâ*, is to say, lose no occasion of speaking to the eye. In a well-composed committee of penal law, I know not a more essential personage than the manager of a theatre.

* It is to the ingenuity of Mr. Revely that I am indebted for this very capital improvement, which I did not submit to without reluctance. It occurred to him in contriving the construction of the chapel, in the room of some crude ideas of my own, a detailed description of which would take up more room than it would be worth. The floors of the present inspector's galleries were to have been continued inwards as far as what constitutes now the area of the chapel. The governor and his subordinates were to have lived in them on week days, and on Sundays these floors were to have answered the purpose of galleries to the chapel. All the way up from floor to floor there were to have been windows, which were to have been got rid of somehow or other during the time of divine service.

† See Letter II.

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lodge so provided but little if any advantage over an annular gallery at the extremity of the circle, as contrived by Mr. Revely. The circuit might be performed nearer the centre; but still, to carry on the process of inspection, a circuit must be performed. Nor could it be performed in an exact circle: the smaller circle thus meant to be performed would be broken in upon and lengthened in four places by zigzags, which would retard a man's progress more than an equal length of circle, and might, upon the whole, consume a portion of time little less than what would be requisite for performing the perambulation in Mr. Revely's inspection-galleries.*

Add to this, that the darkness thus spread over the station of the inspector would not admit of any cure. A candle could not be made to illuminate any object he had occasion to see, without throwing out rays that would render him more or less visible, and his situation and occupation more or less apparent, from the cells. If a screen, concentric to the circumference of the room, were anywhere interposed, and light admitted within side of it by a sky-light or void space over the centre of the building, that would increase the length of the zigzag circuit to be performed through the diametrical screens still more: if there were no such concentric screens, the thorough light would be completely let in, rendering the inspector and every other object in the room completely visible from all the cells.

Happily, this union of incompatible conditions, however requisite to fill up the measure of ideal perfection, is far from being so with regard to practical use. In the narrow annular gallery, as contrived by Mr. Revely, the condition of invisibility may be preserved, I am assured, in full perfection. By being painted black in the inside, that station may be rendered, by the help of blinds, as I had proposed, completely dark, its narrowness rendering it impermeable to the thorough light.

To change his prospect, the inspector must, it is true, be obliged to shift his station. He must therefore from time to time patrol and go his round in the manner of a centinel or a watchman: and this must form a considerable part of his employment. It need not, however, occupy any thing near the whole.† Stationed at no more than 28 or 29 feet from the exterior windows, and close to the space illuminated by the ample sky-light over the annular well, he would have light enough to read or write by: and these employments, by the help of a portable stool and desk, he might carry on at times, at any part of the circle. Books may be kept, entries made, as well in a room of an annular figure, as in a round or square one.

Nor will the time employed in perambulation be thrown away, or expended upon the single purpose of keeping order among the prisoners. Had he, instead of this ring, had the whole circle to range in, he would have had frequent occasion thus to travel in the circumference, were it only to give occasional orders and instructions to the prisoners as they sit at work in their cells, as well as to let them in and out, in manner already mentioned.‡

* The truth is, what one would hardly have supposed, that for performing this perambulation, a walk of about 46 feet and back again in a straight line, is pretty well sufficient. Station the inspector anywhere with his eye contiguous to the outer circumference of his ring, he can, without quitting the spot he stands or sits on, command a view of seven cells on each side. In the same ring, 46 feet may be described in walking without deviating from the right line: and 46 feet is the length of the chord subtending the space occupied in the circumference by 5 cells. A walk, then, in a line equal and opposite to the chord subtending the part of the gallery that corresponds to the dead-part, will give an inspector in his gallery a view of the whole circuit. If, as in case of the admission of female prisoners, the circuit be divided in any story between a male and female inspector, the part allotted to each may, it is evident, be commanded without any change of place. The views thus obtained are not, it must be confessed, complete ones: more or less of every cell but two being all along intercepted by the partition-walls. But it is chance only, and not design, that can withdraw a prisoner in any part of the circuit out of the inspector's view: never knowing in what part of the gallery the inspector is at the time, no one part of any cell can promise him any better chance of concealment than another.

The calculation, it is to be observed, is taken from the real design: were the measurement to be performed upon the engraving, the result, owing to the error already mentioned, would be still more favourable.

† The greatest distance from one part of his range to the other would be 93 feet, being half the length of the circumference of the circle at that part.

‡ See Sect. 3, *Annular Well*, and Part II. Sect. *Airing*.

Your occasional vigilance will not do, says an objector: *Your prisoner will make experiments upon it, discover when Argus nods, and make his advantage of the discovery. : He will hazard a venial transgression at a venture: that unnoticed, he will go on to more material ones.* Will he? I will soon put an end to his experiments: or rather, to be beforehand with him, I will take care he shall not think of making any. I will single out one of the most untoward of the prisoners. I will keep an unintermitted watch upon him. I will watch until I observe a transgression. I will minute it down. I will wait for another: I will note that down too. I will lie by for a whole day: he shall do as he pleases that day, so long as he does not venture at something too serious to be endured. The next day I produce the list to him.—*You thought yourself undiscovered: you abused my indulgence:*

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One expedient there remains, by which, if it be worth while, the invisibility of the inspector may be preserved to him, without the obligation of ever stirring from his seat. This, however, is subject to two restrictions: one is, that whenever he quits a particular spot in the room, to pass to any other part of the same room, he must become visible: the other is, that his invisibility is not shared by any other person in the room. The expedient is to place the inspector in a kind of lantern, shaped somewhat like two short-necked funnels joined together at their necks.

Placed as before on a floor situated midway between the floor and the ceiling of the lowermost of the two stories he commands, his light comes to him from a spot elevated above the eye of a person standing in the uppermost of those stories; consequently, in all cases above the eye of any person dwelling in that upper story. Level with his eye, whether sitting or standing, the lantern narrows to such a degree as to enable him to carry his eye close to the circumference all round, without changing the spot he sits or stands on.

To give him his view, the lantern is pierced at both elevations with small holes, corresponding, as upon trial shall be found most convenient, each of them to one or two or some greater number of the cells. These holes are no larger than the aperture of a common spying-glass, and, like that, closed by a piece of glass, which if necessary might be coloured, or smoked, or darkened by a blind. Grant that after all they will not perfectly exclude the thorough light, nor prevent his figure from being to a certain degree visible from the cells: still, however, the part of his figure thus betrayed will be so small, that to the purpose of discovering to a prisoner in his cell whether the eye of the inspector is at that moment directed towards him or not, it will be the same thing as if he were invisible. That by diminishing the apertures to a certain degree, the effect might be compassed, is indubitable; for the lantern might be of the thinness of paper: in short, it might in that part be of paper, and then a pin-hole would be sufficient to give him a view. Any opaque object, to let down by a line and pulley on his going out, would prevent his absence from being discernible. The difference between a body of that magnitude constantly at rest, and one occasionally in motion, would be masked by the smallness of the apertures.

At the altitude reaching between the height of his eye when sitting, and the height of his eye when standing, the lantern could not be too narrow: it should be only just wide enough to admit his head and shoulders with ease. Above and below that height, the wider the better, for the sake of air and room, so as it did not swell out in such manner as to intercept his view.

The next question is, how to prevent the prisoners from seeing when it is he quits his station? His exit and return, if performed by a door in the side, would be visible from all, or almost all the cells — his lantern not serving him in the capacity of a screen on such occasions, to any degree worth mentioning. To prevent such discovery, his entrance must be, not at an ordinary door on the side, but at a trap-door, by a ladder from below. The lantern might, however, besides that, be furnished with a door at the side, to give him passage at times, when the concealment of his situation was no longer material, and when he saw occasion to show himself for any purpose to the inhabitants of any particular cell; for instance, to give a prisoner passage to or from his cell, for the purpose and in the manner already mentioned.

The central aperture, large as it is, would be no bar to the employing of this contrivance. The lantern, it is true, could not occupy this central part: it must be placed somewhere on one side of it, in some part of some surrounding ring. The inspector, therefore, while stationed in this lantern, would not have a view equally near of all his cells; but of all he would have some view, and that, one may venture to say, a sufficient one: the difference would only be the distance from the centre of the lantern to the centre of the building; say from ten to a dozen feet. The part, too, from which he was in this manner farthest removed, might be the dead-part, where there are no cells — a division which, upon the present plan, occupies five parts in twenty-four of the whole circuit.

Still, however, an apartment thus circumstanced would not serve perfectly well for visitors; for they, at any rate, would be visible to the prisoners: which, for the reasons already mentioned, it were better they should not be. Here, then, comes in one use of the inspector's lodge, a room situated within the inspection-gallery, and encircled by it all round. Many other uses, and those very material, will be observed in it, when the construction has been described: uses, to which, it will be equally manifest that a transparent room, fitted up with an inspection-lantern, would not be applicable with advantage.

The inspector's lodge is a circular, or rather annular apartment, immediately underneath

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see how you were mistaken. Another time, you may have rope for two days, ten days: the longer it is, the heavier it will fall upon you. Learn from this, all of you, that in this house transgression never can be safe. Will the policy be cruel? — No; it will be kind: it will prevent transgressing; it will save punishing.

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the chapel. The diameter I propose now to give it is 54 feet, including the aperture in the centre.*

The central aperture in this story is of the same diameter, as in the area of the chapel and the dome that crowns it, viz. 12 feet: it serves here to light the centre of the *diametrical passage*, of which, under the head of *communications*. This aperture is likewise of farther use in the way of safeguard; for which also see the head of *communications*.

As the central aperture in the floor of the lodge gives light to the passage in the story underneath, so does the correspondent aperture in the area of the chapel give light to the lodge.

Of these central apertures, that which is in the floor of the chapel takes nothing of the room from visitors. During chapel times it is closed: the state of darkness to which it thereby reduces the lodge is then of no consequence, since at those times nobody is there. So likewise, in a cold winter's evening, when day-light gives place to candle-light, the faculty of closing this aperture will probably be found to have its convenience. Its height, at the circumference, is that of the inspection-gallery, about 7 feet; at the central aperture about 13½ feet;† within that aperture, about 61 feet, that being the depth below the sky-light by which the central apertures are crowned. The ceiling is consequently a sloping one; dropping, in the course of 18 feet, about 6½ feet, viz. from 13½ to 7.

All round the circuit, the dead-part excepted, runs a narrow zone of window, to open to the lodge an occasional view of the cells. Of these, the two lower stories may be seen through the lowermost inspection-gallery; the others without any intermedium.

The ways in which this view might be opened are more than one: the simplest is to put two rows of panes; one for giving a view of the two lowermost stories of cells, a little below the highest part of the upright partition: the other for the four remaining stories, in the chord subtending the angle made by the junction of that partition with the ceiling. To these may be adapted blinds of coarse white muslin or linen, pierced every inch or two with eyelet holes about the size of an ordinary silver spangle. By this means, matters may unquestionably be ordered in some way or other, so that no view at all shall be obtainable in the cells of any thing that passes in the lodge; at the same time that a person in the lodge may, by applying his eye close to any of the holes, obtain a perfectly distinct view of the corresponding cells.

By the central aperture, were that all, a moderately good light, it is supposed, would be afforded to the lodge: and this light cannot but receive some addition from the luminous zone thus given to the circumference.‡

To gain the height at which the business of inspection can in this manner be occasionally performed from the lodge, an ascent of about 1½ or 2 feet must be made: this may be done by a circular bench of about 2 feet wide, attached all round to the partition-wall. It may be distinguished by the name of the *inspection-platform* or *inspection-bench*.

By means of the lower part of this zone, the inspector of the gallery attached may himself be inspected by his superiors from the lodge: reciprocity will be prevented by the advantage in height given to the commanding station. He may also be relieved at any time; and whenever the windows of the gallery are thrown open for air, the lodge succeeds, in a manner of course, to its inspection-powers; the view brightening of itself at the time when a view particularly clear is more particularly wanted. So, likewise, when the inspector in the gallery is obliged to show himself at any particular spot; for instance, by opening the door of one of the cells, losing thereby his omnipresence for the time.‖

The lodge is the heart, which gives life

* In some of the impressions of the draught it appears but 42 feet: difference 12 feet. But of this, six feet is taken away from this part by an error in the draught, as already mentioned: the other six feet, by the three feet added to the depth of the inspection-gallery in this story—an addition which I have determined to take away: it has no specific use; and it would throw the lodge so far back as to be precluded by the bottom of the middlemost inspection-gallery from the possibility of having any view at all of the uppermost story of cells.

† The draught does not give quite so much. The higher the better, so long as it does not raise the floor of the chapel so much as that the heads of the chapel visitors, when standing, shall conceal the minister from the prisoners when kneeling in the second story of cells.

‡ The Pantheon at Rome, which is more than twice the height of the space between the floor of the lodge and the opening sky-light over the aperture, is lighted, and, according to Mr. Revely's observation, very well lighted, by an aperture of about twice the diameter of the one here proposed.

‖ In a Panopticon which had eight stories of cells, it might perhaps be not amiss to make the experiment of the lantern. It might be performed on a floor between the lodge and the chapel; the ladder or small staircase to it, like that of a pulpit, ascending through the ceiling of the lodge. It might be tried at a small expense: and in case of its not answering, it would be easy to give to this story the form of the other. Possibly, in different ways, both arrangements might have their use.

But the sorts of panopticons to which the contrivance of the lantern is more particularly adapted, are those in which seclusion from society would be out of the question; such as houses of industry, free manufactories, or schools.

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and motion to this artificial body: hence issue all *orders*: here centre all *reports*.

The conversation-tubes, spoken of in the Letters, will on this occasion be recollected: here they will find employment in more shapes than one.

One set is for holding converse with the subordinate inspectors in the two superior galleries. A small tube of tin or copper* passes from the lodge, in a horizontal direction, to one of the supports of the lowermost inspection-gallery, running immediately underneath the roof, to which it is attached by rings. Here, bending to a right angle, it runs up along the support till it reaches that one of the two superior galleries for which it is designed: it there terminates in a mouth-piece level with the ear or mouth of a person sitting there. A similar mouth-piece is fitted to it at its commencement in the lodge.

A tube of this sort for each gallery may be attached to every one, or every other one, of the 19 gallery-supports, corresponding to the number of the cells.

The tubes belonging to the different stories should be attached together in pairs, with their respective mouth-pieces in the lodge contiguous, that a superior in that apartment may have it in his power to hold converse with the subordinates of the two different galleries at the same time, without being under the necessity of vibrating all the while from place to place.

Whether the voice alone will be sufficient, or whether a bell will be necessary, to summon a subordinate inspector from the most distant part of his gallery to the station corresponding to that chosen by the superior in the lodge, may perhaps not be capable of being decided to a certainty without experiment. If a bell be necessary, it may be convenient to have one for every tube; and the wire, by running in the tube as in a sheath, will be preserved from accidents.†

The other set of conversation-tubes is to enable an inspector in the lodge to hold converse in his own person, whenever he thinks proper, with a prisoner in any of the cells. Fixed tubes, crossing the annular well, and continued to so great a length, being plainly out of the question, the tubes for this purpose can be no other than the short ones in common use under the name of *speaking-*

* About the size of a *pea shooter*, a plaything used by children for blowing peas, will probably be sufficient.

† The power possessed by metallic tubes of conveying the slightest whispers to an almost indefinite distance, can be no secret to such readers as have seen any of the exhibitions of speaking figures, whose properties depend upon this principle.

Many a reader may also have seen Mr. Merlin's ingenious contrivance of written tablets of orders, for masters above to servants below, an index pointing to a tablet in the superior room, giving motion to an index pointing to a duplicate tablet in the inferior room, upon the principle of the drawing machine called a *pantograph*. The conversation-tubes above mentioned, might perhaps supply the place of those order-tablets, and, if it all, with very considerable advantage. The intercourse by the tablets is *limited* to the few orders they can be made to hold: it is not reciprocal. The apparatus, from what I recollect of Mr. Merlin's price, would, I should suppose, be more expensive.

For such purposes, the tube alone, without a bell, would answer the purpose, supposing the servant to be in the room into which it opened, and not unwilling to receive the order: but for summoning him from a distant part of the house, and for putting a negative upon all pretence of not hearing, nothing, it is evident, but a bell, can serve.

The tube, as already mentioned, might serve as a sheath to inclose the bell: thus the expense of the sheaths, which are at present employed in some cases, would be saved. At the places where cranks are necessary, the tubes, that the continuity may not be broken, must be enlarged to receive them. Whether the voice would continue intelligible, as well as audible, after so many inflexions of the tube as may be necessary in some cases in common houses, is more than, without experiment, I can pretend to say. In the present case, there is but one angle, and even that, in case of necessity, might be got rid of.

Wire, by its rigidity, being liable to twist and snap, perhaps the flax of New South Wales, when that admirable commodity comes to be supplied in sufficient quantities for manufacture, might be substituted with advantage.

Under the different mouth-pieces opening into the servants' apartment, might be painted the names of the rooms to which they respectively corresponded.

Copper, by those who would not grudge the expense, would on several accounts be evidently preferable to tin. In the master's apartment, gilt mouth-pieces would form an ornamental addition to the furniture.

It is certainly an awkward circumstance, and which occasions much waste of time in families, for a servant to be obliged to go up three or four pair of stairs to receive orders which are to be executed in the kitchen from whence he came.

Since writing the above, I recollect having seen a tube employed for this purpose many years ago at Messrs. Nairne and Blunt's, mathematical instrument makers, in Cornhill, to great advantage. It reaches from the bottom of the staircase to a level with a workshop in the garret.

At Mr. Merlin's, too, I recollect having heard of an instance in which the principle is employed in a piece of mechanism set up since I was there. Discourse is carried on in whispers between two persons addressing themselves to two heads set up at the opposite ends of a long room. There must therefore be two angles made; two perpendicular tubes inserted into an horizontal one.

It is curious to think what a length of time an idea may lie, without receiving some of its most obvious as well as useful applications. For how many centuries was the art of engraving for impressions practised to inimitable perfection on small stones, without its occurring to any one to apply it to plates or types upon a large scale!

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trumpets. To an inspector stationed in the lodge, it is not indeed in every part of every cell that a prisoner with whom he may have occasion to hold converse will be already visible. But to render him so, there needs but an order summoning him to the grating; which order may be delivered to him through the local subordinate, from the inspection-gallery belonging to that story of cells.

Here may be observed the first opening of that scene of clock-work regularity, which it would be so easy to establish in so compact a microcosm. Certainty, promptitude, and uniformity, are qualities that may here be displayed in the extreme. Action scarcely follows thought, quicker than execution might here be made to follow upon command.

Turn now to the good Howard's Penitentiary-town, and conceive a dozen task-masters and turnkeys running on every occasion from one corner of it to the other and back again (little less than ¼ of a mile) to receive some order from the governor, the prisoners their own masters all the while.

Hither come the customers to such prisoners as exercise their original trades; at stated times to bring materials and take back work, and at most times to give orders. By the conversation-tubes, converse for this as well as every other permitted purpose, is circulated instantaneously, with the utmost facility, to the greatest distance. Even the intervention of the local inspector is not necessary: a call from a speaking-trumpet brings the remotest prisoner to the front of his cell, where he may be seen by the customer, as well as heard. Under each speaking-trumpet hangs a list of the prisoners to whose cells it corresponds. The names are on separate cards, which are shifted as often as a prisoner happens to be shifted from cell to cell. As to the two lowest stories of cells, converse with them may be carried on directly from the corresponding inspection-gallery.

The lodge may serve as a common room for all the officers of the house. Of its division into male and female sides, I speak elsewhere. On the male side, the sub-governor, the chaplain, the surgeon, and perhaps another officer, such as the head schoolmaster, may have each his separate apartment, divided, however, from the rest no otherwise than by a moveable screen, not reaching to the ceiling, and leaving free passage as well round the central aperture as round the inspection-platform attached to the surrounding wall.

In this same apartment, the officers, male and female, may take their meals in common. Room is not wanting. Why not, as well as fellows in a college? This surely would not be the least active nor least useful of all colleges. Too much of their time cannot be spent in this central station, when not wanted on immediate duty. No expedient that can help to bring them hither, or keep them here, ought to be neglected. The legitimate authority of the governor and sub-governor will here receive assistance, their arbitrary power restraint, from the presence of their associates in office. A governor, a sub-governor, will blush, if not fear, to issue any tyrannical order in presence of so many disapproving witnesses; whose opinion, tacit or expressed, will be a bridle upon his management, though without power to oppose and disturb it. Monarchy, with publicity and responsibility for its only checks: such is the best, or rather the only tolerable form of government for such an empire.

In Mr. Howard's Penitentiary-town, each officer has his house—all separate, and all out of sight and hearing of the prisoners. This latter arrangement may be the more agreeable one of the two to the servant; but which is the best adapted to the service?

The want of side windows, as in other rooms, will render it eligible at least, if not necessary, to make a provision of *air-holes* for the purpose of ventilation.

The supports to the surrounding gallery, as shown in the engraved plan, might, if made hollow, answer this intention, and save the making an apparatus of tubes on purpose. In this case, however, each support would require a horizontal tube inserted into it at right angles, which might run close and parallel to the conversation-tubes, immediately under the ceiling.

It is at the level of the ceiling that these air-tubes should discharge themselves into the lodge, and not at the level of the floor. In the latter case, they could not answer this intention without a continual blast, which in cold weather would be very troublesome. In the other way, the blast beginning above the level of the head, is directed upwards, and gives no annoyance. Health is not bought at the expense of comfort.

In giving the slope to the ceiling in manner above mentioned, I had two conveniences in view: ventilation and stowage. To ventilation, which is the principal object, a rectilinear slope in this case is more favourable, not only than a horizontal ceiling, but even than a coved ceiling or dome. Both would have left a space untraversed by the current: in the one case, the space would have been angular; in the other, there would still have remained some space for stagnant air, though lessened by the abrasion of the angle.

The reduction of the height of the ceiling at this part leaves a quantity of room, of which some use may be made in the way of *stowage*. From the area of the chapel, the floor must, as well as the ceiling below, have a certain degree of slope to afford the second story of cells a view of the minister. But the declivity in the ceiling begins, not under the *cir-*

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cumference of that area, but much nearer the centre, viz. at the central aperture. Hence, after necessary allowance for thickness of floor and ceiling, there will remain a void space of considerable extent all round, the exact dimensions of which it is needless to particularise. Disposing the slope here and there in regular and gentle flights of steps, for the purpose of communication, in other places the thickness of 2 or 3 or 4 steps may be laid together, to receive drawers or presses.

A place still more convenient in proportion to the extent of it in the way of stowage, will be the space immediately underneath the inspector's platform in the lodge. It will serve for presses or drawers opening into the surrounding gallery.

A more considerable space runs from behind the two superior galleries, under the steps of the chapel-galleries to which they are respectively attached. Tools and materials of work, of which the bulk is not very considerable, will find very convenient receptacles in these several places, where they will be in readiness to be delivered out and received back, by being handed over the annular well, to the prisoners in their cells.

As to the mode of *warming* the lodge, it will be considered in the section so entitled.*

SECTION IX.

OF THE COMMUNICATIONS IN GENERAL.

UNDER the general name of *Communications* may be comprised—

1. The passages, and galleries serving only as passages.
2. Staircases.
3. Gates, doors, and apertures answering the purpose of doors.

None of these but are articles of very material concern in a prison.

In a Panopticon-prison, one general problem applies to all: to extend to all of them, without exception or relaxation, the influence of the commanding principle. Cells, communications, outlets, approaches, there ought not anywhere to be a single foot square, on which man or boy shall be able to plant himself—no not for a moment—under any assurance of not being observed. Leave but a single spot thus unguarded, that spot will be sure to be a lurking-place for the most reprobate of the prisoners, and the scene of all sorts of forbidden practices.

In an ordinary public building, there is a use in having the communications spacious and numerous: in a prison, they ought rather to be few and narrow. Convenience is the great object in the one case; security in the other. The fewer, the easier guarded; the narrower, the less force there can be at any given point to oppose to the commanding and defensive force of the prison. Nor will the sacrifice requisite to be made of convenience be found so great as might be imagined. In an ordinary public building, persons have occasion to pass in indeterminate numbers at a time, and the same person frequently. In a well-contrived and well-regulated prison, at least in a prison upon this construction, the persons who are to pass, and the times at which they have occasion to pass, are all foreknown and registered. Sacrifice, did I say? The reader has already seen much convenience gained, and I hope he will see scarce any sacrificed.

The objects that required to be attended to, in planning a system of communications for an establishment of this kind, were—1. The *ends* to be kept in view in the contrivance; 2. The places *to* and *from* which communications were to be contrived; 3. The persons and things *for* which the communications might be wanted.

The *ends* to be kept in view with regard to the prisoners, are principally four:—

1. Uninterrupted exposure to invisible inspection.
2. Inability to attack the keeper, or do other mischief.
3. Separation of the sexes, if both are included in one building.
4. Prevention of converse with prisoners of other cells, at times of passing to and fro.

The *places* in question are—1. The cells; 2. The inspection-galleries; 3. The inspector's lodge; 4. The chapel; 5. The warerooms; 6. The fire-places; 7. The yards.

The *persons* in question are—1. The prisoners; 2. The keepers; 3. Visitors to the head-keeper and other officers, on business or curiosity; 4. Visitors to the chapel.

The *things* in question may be reduced to the head of—1. Machines; 2. Materials for work; 3. Finished work; 4. Provisions.

SECTION X.

COMMUNICATIONS.

Prisoners' Staircases.

STAIRCASES for the prisoners are of course requisite from the bottom to the top of that part of the building which they are to inhabit: from the sunk story below the cells, to the upper story of the cells.

I make two sets of staircases, and but two—I put them into the dead-part—I place them in stories one over another, and not, as

* How to reconcile the use of the lodge as a dining-room with the purity of air necessary to the reception of company in the chapel? By making the Saturday's dinner the last meal, dedicating to ventilation the whole interval between that period and the commencement of divine service in the ensuing day.

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was once proposed to me, winding all over the building—I place them in a line within the inner boundary or back front of the cells, yet not extending so far the other way, as to the exterior boundary or fore front.—I make them of iron bars—I make the flight of steps run in a direction parallel, and not at right angles, to the cell-galleries and inspection-galleries—I give them pulley-doors with warning-bells where they open into the galleries—I carry them down to the sunk story below the cells—I make them at the utmost not wider than the galleries.

1. I make two of them, partly to shorten in some degree the passage to each, but principally to provide for the separation of the sexes, if both are received into one building, as in a building of this kind they might be without inconvenience.*

2. I make no more than two. In a building for ordinary uses this number might be scanty; it is not so in such an one as the present. The occasions on which they will be wanted are few; they may be all known and numbered.†

3. I place the staircases of different stories in one pile, one over another, not in a spiral running round the building. In the latter case, the prisoners on each side would in their ascent and descent pass each of them by the cells of all the floors below his own. But such a perambulation would but ill accord with that plan of seclusion, which, from the mitigation given to it, may and ought to be adhered to with the greater strictness. On the plan here preferred, the perambulation, and thence the opportunity of converse, is reduced to its least limits.‡

4. I place them in the dead-part—1. Because by that means I do not make sacrifice of any of the cells; 2. Because I thereby bring them within reach of the governor, or sub-governor, or both, in such manner, that those officers may give an eye that way, without quitting for the purpose the projecting front, in which will be the principal abode of the one, and the occasional business of the other.

5. I place them within the interior boundary or back front of the cells, and consequently within the line of the cell-galleries. This I do, that the width of the cell-galleries in that part may afford sufficient landing-place, as well for a prisoner when he has opened the door leading to the staircase from the cell-gallery, as to an inspector in his way to the prisoners' staircase from the inspection-gallery, of which a little further on.

6. Instead of carrying them home to a line with the fore front or exterior boundary of the cells, so as to occupy the whole depth, I make them fall short of that line by a few feet—say four feet, exclusive of the thickness of the wall, and the apertures, corresponding to windows, that may be made in that thickness. In the space thus reserved, I put water-closets, at least for the governor's house on his side; more especially on his ground-floor.

* See the Section on the *Separation of the Sexes*.

† 1. For meals they will not be wanted. The provision is hoisted up to the cells in trays or baskets, by cranes, one on each side—a tray for each story of cells. In each story, one or two prisoners distribute the contents among the cells. Two double cells being taken off by the dead-part, nine remain on each side, with an odd one in the middle: this makes, at two prisoners to a cell, to each story 20 messes to be hoisted up on each side; at three prisoners to a cell, 30.

There remains only airing-times as far as the prisoners are concerned. On week days, I air them by walking in a wheel without doors, [See the Section on *Airing*.] Airing times occur for each prisoner but twice in the twenty-four hours. Were it much oftener, the time employed in descending and reascending would not be altogether lost; it would go in part of exercise—a necessary article of regimen for sedentary employments, which, *cæteris paribus*, I prefer, for reasons hereinafter given.—[See Section on *Employments*].

Inspectors, keepers as such, have scarce any occasion to enter the cells. Stationed not more than twenty-five feet from the most distant part of a cell, and from the nearest not more than eleven, nothing but the occasion of taking a minute examination of some small object can summon them thither. Once a-day at most will be amply sufficient. The prisoners they let in and out of their cells, without quitting their own station, in manner hereafter described. They have, besides, for their separate use, if necessary, the lodge staircase for their lowest floor, and the company's staircases for the two floors above it.

For taskmasters as such, the occasion to use these staircases is but little more frequent. Their business lies in the cells: all day long, unless it be at meal-time, they will be in one or other of the cells. Raw materials may be distributed, and finished work collected, at stated periods, in the same manner as the provisions. This operation may be directed by the inspectors, without stirring from their galleries. If a taskmaster, as such, looks to it, it will be without going backwards and forwards on purpose, once upon his entrance upon his business, and once upon his leaving it.

With prisoners who work at trades they have been bred to, taskmasters will have nothing to do. In many instances, instruction may be conveyed from the inspection-gallery; and so far there are no taskmasters distinct from keepers.

In ordinary prisons, it requires resolution to be a keeper—a quality in which men who have been bred to sedentary trades are liable to be deficient. But in a prison where a keeper never need see a prisoner without either a wall, or a grating, or a space of seven feet between them, the most arrant coward need not fear being a keeper: courage is almost a superfluous virtue.

‡ The prisoners of a cell nearest the staircase have no cells at all to pass by: those of a cell the most remote, but *nine*. Their instructions are—not to stop or speak as they pass: and for the observance of that rule, effectual security is provided, as will be seen under the head of *Airing*, as also a little below.

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In this recess he commands, without being seen, a view of the staircase, by which means he is *necessarily* obliged, as well as without trouble enabled, to give a look into the prison once a-day at least, at uncertain and unexpected times. The ground-floor is more peculiarly adapted to this purpose, since from that station his chance of getting a sight of the prisoners, as they ascend and descend, extends to the inhabitants of every story of cells in the semicircle on that side: whereas on a superior story the chance would not extend to such of the prisoners, whose cells were situated in any inferior one.

7. The staircases are of iron bars, and not of brick or stone—1. That they may be the more airy; 2. That one part may intercept the light from another as little as possible; 3. That the prisoners, as they go up and down, may be exposed as much as possible to view from the inspection-galleries in that quarter.

8. It is also for the latter reason that the flights of steps run parallel to the inspection-galleries. Had their course been at right angles to those galleries, the stairs being interposed, between the prisoners in their ascent or descent and the inspector's eye, would have screened them from his view.

9. The use of the pulley-doors, which, on opening, ring warning bells, is to give notice of the approach of a prisoner, upon an occasion mentioned elsewhere, to the inspector, who, by that means, is summoned to let him into his cell, and in the mean time to have an eye upon his motions.

10. I place the doors, as in a *protracted partition*, crossing the cell-gallery at that part in its whole width, and consequently terminating in a line with the balustrade; the door being hung on at the side nearest to the cells, and opening *from* the landing-place, behind which runs the staircase *upon* the cell-gallery, and not from the cell-gallery *upon* the landing-place. In this way, partly by the wall, partly by the mode of opening, the view is pretty effectually cut off, as between the prisoners on the staircase and those within the cells.*

11. In making the staircases at all wider than the galleries, there would be no use:—1. There can never be any occasion for conveying by the former anything that cannot pass along the latter. 2. There is not even so much occasion for width in the staircase as in the galleries, since anything that could not be conveyed by the staircases might be hoisted up into the galleries by the crane. 3. Anything that required greater width, might be conveyed, either by the lodge staircase or through the central aperture, to the inspection-gallery on that floor, and to the two higher floors by the chapel-visitors' staircases, — of which presently.

* If it were worth while, the view might be still more completely cut off, by adding another door parallel to the former, opening upon the landing-place.

SECTION XI.

COMMUNICATIONS—INSPECTORS STAIRCASES.

As to the keepers, inspectors, or taskmasters, there are three sets of staircases, of which they may have the use. The two first are the two sets of prisoners' staircases just mentioned: the other set is that composed of the lodge staircase on the lower floor of the inspection-tower, and the chapel-visitors' staircases in the two upper ones.

In addition, however, to the prisoners' staircases, there will be required for the inspectors, from their galleries, short passages or staircases of communication, traversing the intermediate area. These I call the *traversing* or *inspectors'* staircases.

To make the inspector's staircase, I proceed in this manner. At the side of the landing-place opposite to that in which I have placed the door, I carry the cellular partition-wall all the way up, not only across the region of the cell-galleries, but also across the intermediate area, so as to join the inspection-gallery. By this means, a solid opaque back is given to these staircases in every story; and a complete separation is made between the several piles of cells with their staircases, and the remainder of the dead-part. Parallel to this, and between this and the pile of staircase-doors, at the distance of about four feet, I place a thin partition all the way up, with blinded spying-holes running in the line level with the inspector's eye.

Between the two, run two narrow flights of steps, no more than about two feet wide each: by that which is nearest the thick partition, the inspector descends to that part of the prisoners' staircase which is upon a level with the inferior one of his two stories of cells; by the other, he ascends to that which is upon a level with the superior one: or *vice versâ*. Each flight of steps, upon its gaining the landing-place, is crossed by a grated door of equal width, made in the grating which on that site forms a boundary to the landing-place from top to bottom, and opening upon the landing-place. This door, which is kept constantly locked, the key being in the custody of the inspector, serves, when shut, to keep the prisoners from straggling out of their staircase over the inspector's staircases, to pry into the inspection-galleries. Being of open work, it affords the prisoners in their staircase a sight, it is true, of an inspector when crossing over to them on his staircase. But this transient exposure is no derogation to his omnipresence. To all who see him, he is present: nor is he absent with regard

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to those who do not see him; since from his not being present where they can see him, viz. on his staircase, it does not follow but that he may be present at some other part of his station, from whence he may be viewing him, while he is himself invisible.

It is needless to dwell very particularly on the apertures which for the sake of ventilation may be made here and there in both these traversing partitions, as likewise in the interior transverse boundary of the staircase, from whence the thicker of those partitions is continued: the use of them is to give room for currents of air to pass in a horizontal direction, as well as in the perpendicular one.

Those which might be accessible to the prisoners, viz. those made in the partition-wall of the prisoners' staircase, are in dimensions not big enough to give passage to the body of a man or boy: situated out of the reach of the prisoners, they are closed by opening or sliding windows or shutters, capable of being opened and shut by a pole, to which the inspector has access, and the prisoners not without his leave.

SECTION XII.

STAIRCASE FOR CHAPEL VISITORS, AND FOR THE OFFICERS' APARTMENTS.

To the staircase for company resorting to the chapel, I allot the middle one of the five piles of cells in the dead-part. Of the lowermost of these half, the height is occupied by the upper part of the diametrical passage through the sunk story. The passage to this staircase, twenty feet in length, taking that for the depth of the projecting front, will be right over the above-mentioned diametrical one. To reach this elevation, there will be an ascent of 4½ from the ground, to be performed by seven or eight steps.* To light it, which can only be done from above, will require the sacrifice of the centre one of the five uppermost cells, the four others of which are destined for the infirmary. The reasons for using iron not applying here, I make this staircase of stone. Being in use only on Sundays for promiscuous company, and then for no more than four or five hours of that day, it may serve for the officers' apartment on each side: on which account, the expense of stone need the less be grudged.

By two passages, one over another, and crossing the intermediate area, it will distribute the different companies to their respective seats through the channel of the inspection-galleries. Of these passages, the lower one is upon a level with the area of the chapel; the upper one, upon a level with the uppermost inspection-gallery. The area of the chapel being 4½ feet below the level of the middlemost inspection-gallery behind it, the passage divides itself into three. The central part reaches the chapel-area without change of level, by a trench cut through the inspection-gallery to that depth: on each side of it is a flight of steps, seven or eight in number, by which such of the company as propose to sit in the lowermost of the two chapel-galleries will be conveyed through the inspection-gallery of that story to that elevation. The uppermost passage, having no area to lead to, will be uniformly on an elevation with the inspection-gallery and chapel-gallery, to which alone it leads. The inspection-galleries, encircling all round the chapel-galleries to which they are respectively attached, will discharge the company through doors made in any number of places that convenience may point out. The company who go to the area of the chapel will have an ascent of 13½ feet to make, to reach their destination; those who go to the lower gallery, 18 feet; those who go to the upper, 36 feet.

With the company's staircase and the passages attached to it, it may be objected that the prisoners' galleries and staircases possess an indirect communication. But so must every part of every prison, with every other, and with the exit. In the present instance, this communication is not such as can be productive of the smallest inconvenience, either in the way of danger of escape, or in the way of offensive vicinity with regard to the company. To make use of the company's galleries in the way of escape, prisoners must first have forced their way into one of the inspection-galleries. How is this to be effected? And at night, should they, after having forced the grating of their cells, attempt to force the door that opens from their staircase into the inspection-gallery, there they find the inspector, whose bed is stationed close to that door, that he may be in constant readiness to receive them. As to vicinity, the nearest part of the prisoners' staircases will be at twelve feet distance; nor will they be any of them on any part of those staircases at the time: the doors that open into them from the cell-galleries will then be locked. As to view, the prisoner's staircases are indeed open; but this only in front, and the company's staircases and passages are closed: nor will they see anything of the prisoners, till, from their seats in the chapel, they behold them at a distance on the other side of the intermediate area, ranged in order in their cells.

* This inequality is owing to the want of coincidence between the stories of the inspection-tower, and those of the surrounding cellular part—an irregularity produced by the contrivance of allowing two stories of the part to be inspected, to each story of the part from whence the inspection is to be performed.

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SECTION XIII.

CELL-GALLERIES.

UNDER the name of galleries have been mentioned — 1. The prisoners', or cell-galleries; 2. The inspection-galleries; 3. The chapel-galleries. It is only the first that come under the head of *communications*. The two others have been spoken of already.

Of the cell-galleries little need be said. Attached to the several stories of cells, they hang over one another, and over the grated passage, which but for its grating would form a part of the intermediate area. I give them four feet in width, with balustrades of about 3½ feet high. These fences should in height be of more than half that of a man, not only to prevent his falling over unawares, but lest a desperate prisoner should, by a mere push, have it in his power to throw over a keeper or fellow-prisoner: more than the height necessary to afford that security is superfluous, and it tends to reduce the size of the packages capable of being hoisted up from the intermediate area into the cells.

I make them of bars rather than solid work, for the sake of ventilation, and of iron rather than wood, for the sake of strength and durability.

Underneath the galleries runs the passage called the *grated passage*, of the same width with those galleries, but on a level with the intermediate area below, from which it is separated by a grating also of iron, and reaching from within the thickness of a man (or rather of a boy) of the floor of that area, to within the same thickness of the under surface of the lowermost cell-gallery under which it runs. Into this the prisoners are received upon their landing from the lowest staircase, instead of being turned loose into the intermediate area, where they would have unlimited access to the under-warehouses, and by introducing themselves immediately under the inspection-galleries, station themselves out of the reach of the inspector's eye.

Through this grated passage there must be doors, which may be of the same materials, to give access to servants, or prisoners employed as servants, to the fireplaces, and other offices under the cells. On each side of the diametrical passage there must be at least one pair of such doors, and there may be any greater number that convenience may require.

The form of the balustrades is not altogether a matter of indifference. On account of cheapness and transparency, the upright bars should be as few and as slender as the regard due to strength will allow. On account of safe custody, the form should be such, in every part, as to preclude a prisoner from taking a spring from them, so as to jump upon the roof of any of the inspection-galleries which, in a horizontal line, will in the nearest part be at not more than eight feet distance. On this account, the upright bars, instead of finding separate horizontal bars at bottom to meet them and afford them support in a line exactly under them, are inflected towards the bottom; and the perpendicular part and the horizontal being both in one piece, the former receives sufficient support from the latter, and the first transverse piece that presents itself capable of affording a man a treading place to spring from, runs two or three inches within a perpendicular let fall from the rail. Prevented in this way from rising to an upright posture by the overhanging rail, it would be impossible for the most active jumper to take the smallest spring; he would tumble directly down like a dead-weight. Such a configuration may often be seen in balconies, though given without any such view. On the same account, the rail, instead of being flat, should be brought to an edge, in such manner that the section of it shall exhibit a triangle, either equal-legged or right-angled; and if right-angled, with the right angle within side, so that the side opposite the right angle may form a slope too steep to spring from.

These precautions, which would neither of them cost any thing, seem abundantly sufficient: if not, there are a variety of ways in which the deficiency might be effectually made up; though perhaps not without some little inconvenience or expense.*

SECTION XIV.

DOORS.

THE only ones that need any very particular notice are the *folding-doors* that form the grating to the cells. These folding-doors open outwards: 1. Because by this means they may be made so as, when unlocked, to lift off the hinges, in order to give admittance to machines and bulky packages; and this, as I am assured by my professional guide, without prejudice to the security they afford: 2. Because the opening of them inwards would be productive of continual embarrassment, unless within each cell a space, equal to that required for one of the leaves to turn in, were left vacant and of no use. The two leaves I make unequal: the lesser something less than 4 feet, the width of the gallery; the larger will of course take the rest of the space, viz. about 6 feet. The lesser is the only one

* For instance, to crown the rail with spikes, which should be sharp and slender; or to let fall, from the bottom of the balcony above, a row of bars projecting in such a manner as to render it impossible for man or boy to stand upon the rail, in a posture sufficiently near to an upright one to enable him to take a spring.

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I design to open on ordinary occasions: were it equal to the other, that is, were it about 5 feet, its excess of length, when open, beyond 4 feet (the width of the gallery into which it opens) would prevent its opening to an angle so great as a right angle; whereby the passage it would afford to bulky packages would be proportionally narrowed.

As to *locks*, those contrived by the Rev. Mr. Ferryman, for the late Mr. Blackburn, and by him made use of in the construction of the Gloucester gaol, I trust to, upon the report of that ingenious architect, as incapable of being picked: as such, if they are not dearer than ordinary ones in a proportion worth regarding, they will of course demand the preference. But the inspection principle, without detracting anything from the ingenuity of the invention, takes much from the necessity of that and many other prison contrivances. For in a Panopticon, what can be the necessity of curious locks? what are the prisoners to pick them with? by what means are they to come at any sort of pick-lock tools, or any other forbidden implements? And supposing the locks of these doors picked, and the locks of more than one other set of doors besides, what is the operator the better for it? Lock-picking is an operation that requires time and experiment, and liberty to work at it unobserved. What prisoner picks locks before a keeper's face?

An appendage which will have its use in the instance of every door to which the prisoners have access, is a *warning-bell* attached to it in such a manner as to ring of itself upon every opening of the door. The door should likewise be made to shut to of itself, for instance, by the common contrivance of a weight with a line passing over a pulley. By the former of these implements, the attention of the inspector is drawn upon the prisoner; by the latter, the prisoners are prevented from rendering the bell useless by leaving the door open by design or negligence.

SECTION XV.

DIAMETRICAL PASSAGE.

On the sunk story, right through the centre of the building, and leading from the approach through the centre of the projecting front, runs the only thorough passage, called the *diametrical passage*. It serves for the following purposes:—

1. Admitting the officers of the house and visitors into the inspector's lodge; 2. Admitting machines and bulky packages into the annular area, from whence they may be either conveyed into the store-rooms on that floor, or by pulleys or cranes hoisted up mto the store-rooms in the roof over the cells.

Lengths of the Diametrical Passage.

From the door in the projecting front, to the circumference of the exterior circle of the cellular part—say . .	r 20
From the circumference of the great circle to the exterior circle of the intermediate area, viz. that part of it over which run the cell-galleries, .	17
N. B.—Here it meets the light from the sky-light that crowns the intermediate area.	
From the outer to the inner circumference of the intermediate area, . .	11
From the inner circumference of the intermediate area to the circumference of the central aperture in this story,	26
N.B.—Here it again receives the light in like manner from above.	
From this anterior part of the circumference to the posterior part, . . .	12
From the posterior part of the circumference o the central area, to the inner circumference of the intermediate area on the other posterior side, . . .	26
N.B.—Here it again receives the light.	
From thence to the interior circle of the grated passage under the cell-galleries on that side, ...	7
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Here it is cut into three, in a manner that will be described in speaking of the *exit*. On the left hand of the diametrical passage is a *staircase* leading to the inspector's lodge.

On the details of this staircase, with regard to situation, dimensions, and form, it is neither easy nor necessary at this stage of the design to make a fixed decision. They are left very much at large by the governing principle, and convenience on this head will depend in good measure on local circumstances, such as the form and dimensions of the under warehouse against which the staircase will abut, and the form and dimensions of the officers' apartments on that side, in or near the projecting front.

The form which in a general view appears most advantageous, is that of a straight and simple flight of steps without return or curvature. The convenience of a return is, that half the room is saved; the inconvenience of it is, that the space a man has to traverse, in order to reach a given point, is augmented to the amount of what would be the whole length of the staircase if laid out in a right line. The point, however, at which it terminates and opens into the lodge, should at least not go much beyond the central point of that apartment, lest, through ignorance or design, access should be gained to the inspection-gallery, and thence to the cells, by visitors to whom such privileges might not be thought fit to be allowed.

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Regularity would require, but convenience does hardly, that on the right hand of the passage there should be a similar staircase.*

At the line where it falls into the anterior part of the central area, the diametrical passage is crossed by a pair of folding-gates of open iron-work, occupying its whole width. These gates prevent promiscuous visitors from advancing any farther, and straggling either into the warehouse on each side, or the posterior part of the intermediate area.

Before it reaches this transverse gate, it receives no side doors on either side. Such doors, if opening into the anterior part of the intermediate area, would require porters to guard them; if into the warehouse, viz. the space between the intermediate and central area, they would render it less safe to make use of the labour of the prisoners in that part of the building.

The pavement of the diametrical passage being upon a level with that of the annular area, and the exterior surface of the crown of the arch level with the floor of the lowermost inspection-gallery and that of the inspection-lodge, the *height* of this passage will be in the clear about 11 feet, and including the thickness of the arch, 12 feet.

In the floor of the lodge the central aperture will in the day be in general left open, in order to give light to the central area. At bed-time, it might either be closed for warmth, or left open for security; in order to expose to the view and offensive force of a keeper lying with a light in the lodge, any prisoner or prisoners, who, contrary to all human probability, should have made such progress in a project of escape, as to find themselves in a situation to make an attempt upon the transverse gate.†

At the foot of the staircase to the lodge might be a *door*, the opening of which should ring a *warning-bell*, to advertise the inspector of the approach of visitors as he is sitting in his lodge. In consideration of this security, added to that of the porter stationed at the entrance into the approach, the front door, opening from the approach into the diametrical passage, need not be locked; nor will any such person as a turnkey, or porter to the house, be necessary. At the foot of the staircase, visitors might be stopped from proceeding farther without ringing a bell and obtaining the assistance of the inspector in the lodge, which by the help of known contrivances he might afford without stirring from his seat.

To protect the lodge, when thus thrown open, from the cold blasts of a thorough passage, it will probably be thought necessary to add to the grated gates above mentioned, a pair of close folding doors; as likewise a similar pair of doors on the opposite or posterior side of the central area. With this defence from cold, there need be the less scruple about stationing a keeper to sleep in the lodge, with the central aperture open in the floor.

SECTION XVI.

COMMUNICATIONS—EXIT INTO THE YARDS.

THE exit into the yards is one of the nicest parts of the anatomy of the prison.

The diametrical passage, when arrived at the anterior circumference of the farther side of the annular area, is absorbed by it: but recommencing at the posterior circumference, is there cut into three branches: a middle one, being a line of communication joining without discontinuance the inspection-gallery over-head to the *watch-house*, or *look-out*, that serves for the inspection of the yards; and two lateral ones, one on the male, and the other on the female side. Taking their common departure from the grating of the annular grated passage, they run on in parallelism, like a nerve, an artery, and a vein.

The nerve which conveys to the most distant extremity of this artificial body the all-vivifying influence of the inspection principle — the line of communication, I mean — at its origin in the inspection-gallery, preserves its level for some space; that is, so long as it hangs over the intermediate area, and till it reaches the region of the cell-gallery. While it does so, I call it the *inspector's bridge*: and, to distinguish it from a similar pass on the outside of the building, the *inspector's inner bridge*. At that line, in order to fall within the width of the grated passage, and get from thence into the arch that leads to the outside of the building, it makes a sudden drop.† Four feet being the whole width, two of them are allowed to form the slope at the descent,

* The right-hand side of the prison being for males, requires the most watching and the greatest resort, as well on account of numbers as of sex. Hence I make this side of the lodge the principal one for the abode of the officers, and for the reception of customers and other visitors. It is therefore on the other side that the room for the staircase can best be spared.

† The cover for the central aperture might be so constructed as to form, when lifted up on hinges, a parapet, answering the purpose of a balustrade, each quadrant turning upon a hinge at the circumference. There would only need a few bars to hook on horizontally, to complete the circuit. Or, though the aperture were circular, the cover to it might be square. A central piece to lift off, of 4 feet diameter in the one case, or 4 feet square in the other, would reduce the height of the parapet to 4 feet.

† Of the making this sudden drop, instead of giving the line of communication in that part a regular descent, commencing at the inspection-gallery, one reason is, that it may not block up the intermediate area, and obstruct the introduction of bulky packages from the diametrical passage. Another use is, the forcing the inspector to take a view, in his descent, of the diametrical passage and the warehouses on each side, as will be seen presently.

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the other two are allotted to give room for the inspector at the instant after his landing, and before any part of his body is within the arch.* The space occupied by the first two of these four feet I call the *inspector's drop:* that occupied by the other two, the *inspector's landing-place.* Under the lowermost story of the prisoner's cells, all round, runs a sunk story of cells, composed of arches of the same width and depth, but wanting a foot and a half of the height of those which compose the cells. That part of the line of communication which runs through and occupies one of these subterraneous arches, I call the *straits.* The whole width I divide into three passages: the middle one, being a continuation of the inspector's landing place, I call the *inspector's straits.* The two others, one on each side of the inspector's straits, receive the prisoners, and conduct them through the arch from the grated passage: these I call the *prisoner's straits.* The floor of the inspector's straits I make as much higher as the height of the arch will admit, above the floor of the prisoner's straits on each side: the reason is, that he may have the more commanding view of them, as he and they go out together. As a farther help, their floor may drop a step just before their arrival at this pass; and from thence it may sink a little further by a very gentle slope:† and the advantage would be increased by giving an arched form to the partition on the side of the prisoners on either hand, the curve bending *from* his side towards theirs. In this way, the advantage given him may amount to about 14 inches, a superiority which, taking into account the differences of height between man and man, seems to be as much as can be requisite. This superiority will be thus made out:—

	F.	IN.
Distance from the floor of the cell above (thickness of the arch included) to the floor of the grated passage beneath, ...	7	6
Fall of the latter floor by a step, .	0	10
Total depth of the floor on which the prisoners tread, below the floor of the cell above, ...	8	4
Thickness of the above arch, . . .	1	0
Space allowed in height for the inspector's passage, ...	6	1
Distance of the platform he walks upon below the floor overhead, .	7	1
Distance of the floor the prisoners walk upon below the same level, as before, ...	8	4
Substract the inspector's distance, .	7	1
Remains the height of the inspector's foot above that of the prisoners, .	1	2

* Two feet is no great thickness: but a man of greater corpulency is certainly not fit to bear an executive part in the government of a prison.

† This slope would have the farther use of facilitating the carrying off the water employed in washing the intermediate area.

In point of *width,* the line of communication, at its origin from the inspection-gallery, and before it reaches the entrance of the arch, has no particular limitation:‡ but at that pass, which I call the *straits,* it must conform to the dimensions which the width of the arch allows, after reservation of a sufficient space for the prisoners on each side. If anything like difficulty occur anywhere, it must be at the very entrance into the arch, since from that pass it widens gradually to the exit. Ought the width of all three passages to be alike? or should any, and which, have the advantage in this respect over the other two? The occasions on which inspectors will have to pass one another will occur but rarely: but in the instance of the prisoners, these occasions will be still more unfrequent. On week days, twice a-day each prisoner descends to the airing-wheel: but should they descend even in pairs, or three's, they would not cross one another at all; for one does not quit the wheel till another has arrived there. Neither on Sundays is there any occasion for them to cross, at least at this particular spot: and all *their* motions may be predetermined and provided for. Restraint is suitable to their condition; freedom to that of the inspector. A confined space will have the further use of cramping any exertions a prisoner might be disposed to use, in the view of bursting in upon an inspector when engaged in so narrow a pass, with a partition between them of so little thickness.

Here follows, then, an example of the dimensions, in point of width, that might be given to these passages:—

	At the entrance into the Arch. F.	IN.	At the exit from the Arch. F.	IN.
Clear width of the space for the male prisoners' passage, on the right hand side of the inspector's passage, ...	2	6	4	2
Thickness of the partition of the inspector's passage,	0	7	0	7
Clear width of the inspector's passage, ...	3	10	4	0
Thickness of the partition of the inspector's passage on the female side, . .	0	7	0	7
Clear width of the female prisoners' passage, . .	2	6	4	2
	10	0	13	6

Upon this view, the widths capable of being allowed are so much beyond what is absolutely necessary, as to leave a considerable latitude of choice.‖ The partitions may

‡ Except with reference to the opposite cell; of which it covers from a direct view, a width equal to its own. On this account, the narrower the better.

‖ If they were not, the arch thus allotted to receive the line of communication might be made wider than the rest, upon the condition of giving the same extra width to that whole pile of arches all the way up.

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accordingly be made more or less thick, according to the nature of the materials. When the inspector's passage, having gained the region of the yards, assumes the name of the *covered way*, the partitions which bound it will naturally require the strength and thickness of a wall; while the prisoners' passages, having no longer any part of the building to bound them, will require each of them a wall on purpose, as will be seen under the head of *Outlets*.

To give the inspector his possible view of the prisoners as they pass, there must, of course, be *sight-holes*. They may be closed with glasses. They ought to be conical; narrower on the inspector's side than on the prisoners' side. Though these holes should on the different sides be on the same level, they will not yield to the eye of the prisoner the thorough light: for they are considerably above his eye, and no line drawn towards his eye, from any hole on the one side, would pass through any hole on the other: another advantage in sinking the floor of the prisoners' passage below the level of the inspector's passage. The wall of this passage, in the same manner as those of the inspection-gallery of which it is the continuance, should for the same reason be painted black: those of the prisoners' passages, for the opposite reason, kept as white and as glossy as possible.

The least convenient part of the whole is the *inspector's drop*.*

But out of this very inconvenience I extract a superior advantage. The descent is by a sort of ladder, deviating so little from the perpendicular as to oblige a man, in order to find footing as he goes down, to turn his face *to* instead of *from* the steps: in so doing, he gets, and is obliged to get, a view of the diametrical passage and the warehouse on each side; such as it would have been difficult to have given him by any other means. A rope or bar to hold by on each side saves him from all danger, and even from all inconvenience, beyond that of being obliged to turn himself half round.

A few inches below the level of the ceiling of the diametrical passage, is a *sight-hole* in the partition that forms a back to the steps: through this, as he descends with his face to the ladder, he gains a full view of that passage: and on each hand another sight-hole, through which he gains a view equally full, through correspondent apertures, of the inside of the warehouse on each side.† By this means, the labour of the prisoners may be made use of with the less scruple in all those stations, without the necessity of stationing along with them in each place an inspector on purpose, and yet without departing in this, any more than in any other instance, from the principle of omnipresence.

As to the *relative width* to be given to this line of communication in its different parts, it admits of considerable latitude. The most natural course is to give it the same width throughout. In its whole width, whatever that be, it blocks up, not only the whole of the opposite cell of the first story of cells, but even a part of the height of the second story: filling up the place of the cell-gallery in both instances. To give a passage round from the cell-gallery on one side to the cell-gallery on the other, requires some little contrivances, with relation to which it is not necessary to be either very particular or very determinate. In the upper one of the two stories, the obstruction may be obviated, partly by lowering the ceiling of the line of communication in that spot; partly by giving a step or two from the cell-gallery on each side, to carry the passenger in that spot across and over the obstruction: in the lower one of the two stories, by cutting out of the cell, all round the obstruction, a space sufficient to make a passage of equal width with the cell-gallery, viz. four feet.

It is scarce necessary to observe, that in order to maintain in this part the limitation set to the prisoners' path, and to prevent them from straggling into the intermediate area, or clambering up the line of communication, so as to get at top of the inspection-gallery, or force their way in at the windows, the grating of the annular grated passage must, in its form, be governed by the configuration of the parts in question, and apply itself to them with particular care: and where any part of the line of communication is within reach of the prisoners, either walking in their passage or abiding in their cells, it should be of materials equally impregnable.

SECTION XVII.

EXTERIOR ANNULAR WELL.‡

ALL round the polygonal part of the building, runs an annular trench, which may be called the *Exterior Annular Well*, and its floor the *Exterior Annular Area*. In width I make it 12 feet; less than that not being sufficient to afford length enough to the line of communication in that part between the inside of the building and the look-out in the yards.‖

* Two feet only in width, to 11 feet 7 inches descent, leaves, at the large allowance of nearly one foot for each step, little more than two inches projection of each step beyond the one above it.

† The warehouses are laid out, as far as convenience admits, in such a manner as to favour this view, upon the *radial* principle, as explained under the head of *Outlets*.

‡ This well, except in its width, is but little different from the sunken wells or areas which are so common in the front of the London houses.

‖ See Section *Outlets*. It might even be wider

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The floor, for the sake of carrying off the water, is 8 inches lower than the floor of the prisoners' passage through the building, which, as mentioned in speaking of the exit, is itself 10 inches below that of the *interior* annular well.*

It is bounded all round by a *wall*, which, after serving for the mere support of the earth from the area below to the surface of the ground above, is crowned by a parapet, reaching about 4 feet above that surface. This 4 feet added to the 7½ feet, and the 1½ feet, *i. e.* to the 9 feet, makes 13 feet, the height which a prisoner who had let himself down into the well would have to climb up before he could gain the yards.

It is filled up and cut through in one part only, viz. at and by the line of communication above mentioned, running in the same direction with the diametrical passage.

The uses of it are as follow:—

1. To give light and air to the sunken story under the cells.

2. To prevent prisoners from escaping, upon the supposition of their having let themselves down from the windows. It answers in this point of view the purpose of a ditch in fortification on the outside of the building, in the same manner as the intermediate well that runs parallel to it in the inside.

3. To reduce the ascent which the chapel-visitors have to perform in order to gain the chapel, and to afford a place for a kitchen and other such offices to the governor's house, without sacrificing a ground-floor to that purpose, and lodging him and his family at an inconvenient height.

4 To afford all round a commodious place for cellaring, capable of being enlarged indefinitely as occasion may arise.

Were there no such trench cut on the outside, what would be the consequence?—Either—

1. The building remaining in all other particulars the same, the ground must be brought close to it all round;—or,

2. The story under the cells must be omitted altogether, as well in the cellular part as in the inspection-tower;—or,

3. That story must be raised above ground, and the whole building made so much higher.

In all three cases, the 2d and 4th of the above advantages would be lost. A prisoner who had let himself down from any of the windows would find nothing capable of preventing him from going on to the exterior wall: the convenience of cellaring would be lost: and, the floor of the lowest story of cells being even with the ground, there would be nothing to hinder the prisoners in the yards from holding promiscuous converse with the prisoners on that story of the cells.

In the first case, too, the space under the cells would be reduced to the condition of mere cellaring: not fit for any person to abide in, or pay frequent visits to, on account of the absolute want of free air; debarred in a great degree from the light, of which the intermediate well would at that depth afford but a very scanty measure. The warehouses under the lodge would likewise suffer in point of ventilation, by being deprived of the draught which might be occasionally made by throwing open the windows of the rooms under the cells, at the same time with the doors opening from them into the intermediate area.

In the second case, there would be no place for lighting fires under the cells; no place for warehouses anywhere; no means of conveying the prisoners into the yards, without giving them the faculty of promiscuous intercourse, by carrying them in their passage to and from their staircases abreast of every cell in the lowermost story of cells. There would be no diametrical passage; no means of conveying bulky articles into the cells and store-rooms overhead, through the intermediate area; and that most indispensable of all apartments—that vital part of the whole establishment—the inspector's lodge, would be cut to pieces and destroyed.

In the third case, which is the least unfavourable one, the second and fourth, of the above advantages, as already mentioned, would be sacrificed, as also the third: 8 feet would be added to an ascent already greater than could be wished; and no advantage worth mentioning would be gained.†

SECTION XVIII.

WINDOWS REACHING LOW, AND GLAZED; INSTEAD OF HIGH UP, AND OPEN.

BEING informed, that in a building of this height, and consequently of this thickness, glass would not cost more than wall, my instructions to the architect were, *Give me as much window as possible;* provided they are *not brought down so low as to render it too*

without inconvenience, and without any objection but the extra expense, which is only that of digging and paving. This degree of width, it is true, is not absolutely necessary anywhere else than close to the line of communication, to afford room for it to rise by a staircase to a level with the ground. But on account of light and air, it were better not to narrow the area anywhere else.

* Total, 18 inches lower than the interior well. It may be brought to this depth from 12 inches by a gentle slope.

† The quantity of building would be the same; and the saving of the small expense of digging would be at least counterbalanced by the additional expense of scaffolding and workmen's loss of time in ascending and descending. The only saving would be that of the sunk wall of 9 feet high for the support of the ground—a purpose for which the slightest thickness of walling would be sufficient.

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cold. In consequence, I have two windows in each cell: each 4 feet wide and 5 feet high.

It was Mr. Howard that first conceived the prevailing antipathy to glass: it admits prospect, and it excludes air. Prospects seduce the indolent from their work: air is necessary to life. On any other than the Panopticon plan, the antipathy may have some reason on its side: on this plan, it would have none. Blinds there are of different sorts which would admit air, without admitting prospect: glazed sashes when open will admit air. But blinds, as soon as the inspector's back was turned, would be put aside or destroyed; and windows would be shut: for the most ignorant feel the coldness of fresh air, and the learned only understand the necessity of it to health and life. True: but in a Panopticon the inspector's back is never turned. In this point, as in others, who will offend, where concealment is impossible?

In Mr. Howard's plan, observe what is paid for shutting out prospects. The tall must be kept from idling as well as the short; and a tall man may make himself still taller by mounting on his bed, or standing on tiptoe. Therefore, windows must not begin lower than seven feet from the floor. But above this seven feet there must be a moderate space for a hole in the wall called a *window:* partly for this reason, and partly to make sure of sufficient height of ceiling, a cell must be at least ten feet high in the inside. Such accordingly is the construction, and such the height, of the cells at Wymondham.*

To what climate is this suited? To the East or West-Indies; perhaps to some part of Italy; certainly not to any part of our three kingdoms. To what employments? To laborious employments—to employments that are to be carried on out of doors; to few that in such a place can be carried on within doors—to few indeed that can be termed sedentary ones. What weaver, what spinner, what shoemaker, what tailor, what coachmaker, can work with drenched or frozen hands?

To mitigate the cold, and to exclude snow and rain, Mr. Howard allows a wooden shutter. But to do this, such a shutter must exclude light. What is the wretched solitary to do *then?* creep into his bed, or sit down and pine in forced and useless indolence.

Mr. Howard, with all this, allows no firing. One would think from him there were no winter.

The thicker walls are, and the higher above the floor holes in the wall instead of windows are, the better they serve to keep out cold and rain: hence another reason for piling bricks upon bricks, and giving rooms in prisons the height of those in palaces.

In rooms that have no light, that is, not three or four feet above the eye, weaving can scarcely be carried on: from such rooms, that profitable employment, that quiet employment, in other respects so well suited to an establishment of this kind, is therefore in all its infinity of branches peremptorily excluded. For this, therefore, among other reasons, there must be other places for working in. Accordingly, at Wymondham, for 50 feet 4 by 14: 8 of cells, you have on one part 20: 6 by 10 feet of work-room;† and in another part, a work-room of the same dimensions for only 29 feet 4 by 14 feet 8 of cells.‡

At Wymondham, these holes are guarded each of them, inside and out, by a double grating: a single one under the eye of an inspector is enough for me. Were a prisoner to elude this eye (though how he is even by night to elude the eye of a watchman, constantly patroling, I do not know,) and get through this grating (though how a man is to force iron bars without tools, I am equally at a loss to conceive,) where will he find himself? In the yards? No, but in a well, in which he has a wall of 13 feet high to climb, as we shall see, ere he can reach the yards. And were he over this wall, where would he be then? In a space inclosed by another high wall, with three centinels in an inclosed walk, patrolling on the other side.

So far from there being any need of double gratings, the single grating need not have cross bars. It is not necessary it should be capable of resisting either long-continued attempts, or violent ones.‖

If anywhere, in any particular pile of cells, any unguarded circumstance in the construction afforded the means of descent otherwise than by climbing down instead of dropping, advantage could not be taken of the weakness from any other pile in the circuit: in the polygonal form, the projecting angles render-

* See Sir T. Beevor's Letters in Annual Register for 1786, Letter III.

† Viz. a little less than one third addition.

‡ Viz. a little less than one half of addition.

‖ There would be an advantage in placing it as near to the outside of the wall, and by that means as far from the inside of the cell, as it can be, consistently with strength; that is, so as not to be liable to be thrown down by a push, together with the brick-work or stone in which it is bedded. Why? Because by this means so much room may be gained to the cells—the pier under each window forming a kind of dresser answering the purpose of a table.

Above the third story of cells, bars can hardly be deemed necessary. The window of the lowest being 10½ above the sunken external area, the following table shows the heights from which a fugitive would have to drop from the respective windows upon a stone pavement: it being taken for granted that the cell affords neither a rope, nor materials of which a rope could be made in the compass of a night, by persons exposed, occasionally at least, if not constantly, to the eyes of a patrolling watchman:—

Lower story,	10 f. 6 in.	Fourth story,	37 f. 6 in.
Second story,	19 6	Fifth story,	46 6
Third story,	28 6	Sixth story,	55 6

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ing it impossible to climb horizontally on the outside, from a window of any cell to any window of the cell contiguous on either side.

If fastened up in two places on each side, and in the middle at top and bottom, the gratings may want about 7 inches of reaching the brick work at bottom, and about ten inches of reaching that at top; especially if they terminate at top and bottom, not in a horizontal bar, but in a row of perpendicular spikes: by this means, little more than 3½ feet in height of grating will serve for a window 5 feet in height; and in width little more than 2½ feet of grating will serve for 4 feet.

Among the offenders who are liable to be consigned to these scenes of punishment, it is but too common to see boys of little more than ten years of age. A thin person, boy or man, can generally get his body through, wherever he can pass his head; that is, if not hindered by the breadth of his body, he will not be by the thickness. But a person cannot press against the point of a spike, as he could against a bar. From these *data*, gratings might be formed, requiring a much less quantity of materials than what is commonly employed, yet of sufficient strength for the present purpose.

SECTION XIX.

MATERIALS.

Arched Work—Much Iron—Plaster Floors.

THE peculiarities of the present plan are not confined to the head of construction: they extend in some degree to the *materials*. The abundant use made of *iron* will hardly fail to be observed.

In preferring brick or stone-work to wood, and in consequence arches to other partitions, it does no more than follow the plans already in vogue. Such a mode of construction is more particularly necessary in a Panopticon, than in a building of perhaps any other form. The circumstance that renders it so peculiarly favourable to ventilation, renders it of course equally exposed, if made of combustible materials, to accidents from fire. Were a fire to begin anywhere, especially towards the centre, it would spread all round — the wind would pour in from all quarters — the whole would be presently in a blaze—and the prisoners, being locked up in their cells, and even were their cells open, deprived of all exit except through one or two narrow passages, would be burnt or suffocated before any assistance could be applied.

This at least would be the case were it not for the care taken to keep accumulated a large fund of water in the cistern at the top of the building, ready to be poured in whenever and wherever there may be occasion for it. But notwithstanding this assistance, and the great security against all such accidents afforded by the circumstance of unremitted inspection, as a building of this sort is designed for duration, and the difference in point of expense need not be considerable, it seems best to be on the safe side.*

The great use here proposed to be made of iron has been made on different occasions with a view to different advantages: sometimes to admit air, sometimes to save room, sometime for the sake of strengh. In all instances, it has the advantage of being peculiarly impregnable to putrid contagion — even plaster, brick, and stone, not being in this respect altogether above reproach. Hence the great stress laid on frequent white-washing, wherever any of the three latter materials are employed.

It is partly on account of the admission it gives to air, that I prefer it for both the prisoners' staircases, and for all their galleries. In arched galleries of brick or stone, besides that they would take up room, the air might be apt to stagnate. Substituting open-work to such close materials, adds in effect so much in width to the annular well. The interstices between the bars, instead of forming an obstruction to a current of air, serve rather to accelerate it.

It was the consideration of the little room taken up by this material, that suggested it to me as peculiarly well adapted to the purpose of affording supports to the chapel. Brick pillars, of the thickness necessary to support so lofty a building, would afford a very material obstruction to the voice in its passage from the minister to the prisoners, when stationed in their cells, or in the galleries before their cells. It is on the same consideration, likewise, that I propose to make considerable use of it in the construction of the inspection-galleries. It is to obtain both these advantages, that I make use of no other material for one entire boundary (viz. the interior one opposite the windows) of every cell.

To obtain that sort of strength which consists in inflexibility, with less unwieldiness, and at a less expense of materials, it occurred to me to make the pillars hollow. Being of iron, they may thus be made not only to take up beyond comparison less room, but even to possess greater strength, even when hollowed to such a degree as not to exceed brick

* In a panopticon which required apartments of greater width than could conveniently be given to arches, some of the other modes of securing buildings against fire might be adopted; such as that of stopping the draught of air by iron plates, upon Mr. Hartley's plan — or by simple plastering, upon Earl Stanhope's. Such superior width might be necessary in some manufactories: nor would it be incongruous to the object of the institution, where seclusion was out of the question, as in free manufactories and poor-houses.

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or stone in weight. It occurred to me, that iron was cast in large masses to serve for water-pipes. Upon inquiry at a great foundery where it is cast for such purposes, I learnt that in that manufactory it could be cast hollow for a length of 12 feet, but no more. Upon consulting with my professional adviser, I was informed that that length could be made to suffice; and it occurred to him, that of the eight supports which would be a sufficient number for such a building, some might be made to answer the purpose of water-pipes for conveying the water from the roof; and to me, that others of them might be made to serve for chimneys — articles for which it might otherwise be not altogether easy, in a building of so peculiar a construction, to find a convenient place.

In point of economy, I hope to find this useful material not more expensive, but rather less so, than the quantity of stone or brick-work that would be requisite to answer the same purpose;* since cast-iron, and, in most instances, even that not of the finest quality, would answer as well as hammered, with half the expense.

It is at the recommendation of the same intelligent artist that I adopt those called stucco or *plaster floors*, in preference to any other; and this for a variety of reasons: —

1. They are incombustible. In this respect they have the advantage of wooden floors.

2. They take up very little room. The thickness of 1½ inch over the brick-work at the crown is sufficient. In this point they have the advantage over all other floors, and most of all over wood, which, besides boards, require joists to lay them on.

3. They are uniform, without crevices or interstices. In this respect they have also the advantage over all other floors: in the highest degree over brick, then over wood, and even over stone. The inconvenience of crevices and interstices, as is well remarked by Mr. Howard, is to harbour dirt, and occasionally putrescent matter, capable of fouling the air, and affording ill scents.

4. They are cheap: when thus thinly laid, much cheaper than wood, or stone, or even than any choice kind of brick, such as clinkers; and full as cheap as any tiling that would be proper for the purpose.

5. They are, it is true, liable to crack, especially on the first settling of the building. On the other hand, if a crack takes place, they are easily and effectually repaired.

Mr. Howard lays great stress on the unwholesomeness of such floors as, by their roughness, such as unplaned boards, or by numerous and wide interstices, are apt to harbour putrescent matter: but I know not that he anywhere recommends plaster floors, which are freer than any ordinary floors from that inconvenience.

* In Hughes' Riding Amphitheatre, near London, the supports, I am told, are of iron silvered.

SECTION XX.

OUTLETS, INCLUDING AIRING-YARDS.

ARE *airing-yards* to be looked upon as a necessary appendage to the building? If so, what *extent* ought to be given to them? Ought any, and what, divisions to be made in them, corresponding to so many divisions among the prisoners? In what manner may the influence of the inspection principle be extended to them to the best advantage? — The answers to these questions will depend partly upon the general plan of management in view, partly upon local circumstances.

Of these points, the first and third are considered under the head of management:† and the result is, that airing-yards to be used on working-days are not essential to the establishment; but that for Sunday's use they would be at least convenient: that if both sexes are admitted, one division, and consequently two separate yards, are indispensable: but that, as between prisoners of the same sex, the advantage to be gained by any further division seems hardly decided enough to warrant the expense.‡

Whatever be the extent of the airing-ground, and whatever the number of divisions made in it, two erections must at any rate be made in it, in order to extend to these exterior appendages the all-vivifying influence of the commanding principle: 1. A *look-out*, or *exterior inspection-lodge*; 2. A line of communication for prisoners as well as inspectors, between this look-out and the building. Let the look-out, then, be considered as occupying the centre of a circle: of this circle, the line of communication forms one radius: from the same centre may be projected, as *co-radii*, walls in any number corresponding to the number of divisions pitched upon.‖ See Plate III.

† See the Sections on *Employment*, *Airing*, and *Schooling*.

‡ The numerous yards in Plate III. are given only by way of illustration, and to show upon what principles the topographical division, were it to be judged necessary, might be formed to most advantage.

‖ In the magazine of expedients, the most simple is seldom that which first presents itself to our search. In the first hasty design, as sketched out in the Letters, it was by a surrounding gallery that the influence of the inspection principle was to have been extended to uncovered areas; and this gallery was to have been attached to the surrounding wall. The advantages of centrality were thus thrown away without necessity, and without any advantage in return. In point of expense, the disadvantage might be more, and could not be less, than in the proportion of a

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In section 16 we left the line of communication at the spot at which, having cleared the building, it cuts across the external annular area. But at this spot it is considerably below the level of the ground in the yards through which it leads. The surface of the ground I suppose exactly on a level with the floor of the lowermost story of cells; which floor is 7:6 above the level of the intermediate area. The floor of the prisoners' passages, being 10 inches below the level of that area, has 8:4 to rise before it comes to a level with the surface of the ground. That of the inspector's passage, being five inches above the level of the same area, has consequently but 7:1 to rise before it comes to a level with the ground. But in the straits under the arch we gave the inspector the advantage in point of ground over the prisoners to the amount of 1:3; and for this advantage there is the same occasion in one part of the line of communication as in another. Adding, therefore, this rise to that of 7:1, which the floor of the inspector's passage has to make in order to reach the level of the ground, we have 8:4, which is the same rise as that given to the prisoners' passages. In this way the two floors preserve their parallelism during the whole of their course.

The particulars of this course may be thus made out: —

Prisoners' Passage on each Side.

	F.	IN.
Lengths—Exterior landing-place from the outside of the wall of the building to the commencement of the flight of steps which may be called the *prisoners' rising-stairs*, . .	2	0
Prisoners' emerging or rising-stairs, from the exterior landing-place to the *prisoners' bridge*, ...	8	4
Prisoners' bridge, from the prisoners' rising-steps to the *prisoners' lanes*, running parallel to the inspector's *covered-way*, on the surface of the ground through the yards, . .	1	8

Underneath this flight of steps there is ample room left in the exterior annular area, as well for passing as for conveying goods. Before it has advanced in length to within four feet of the wall bounding the external area, it is more than six feet above the level of that area in that part; and at the surrounding wall, 9 feet.*

Inspector's Passage between the Prisoners' Passages.

Lengths—The same as above: the difference, which is only in point of level, being the same throughout, except that, in this passage, the flight of steps gaining the level to which they lead a little earlier than in the prisoners' passage, the *inspector's bridge*† is a few inches longer than that of the prisoners'.

As to the floor of the prisoners' rising-stairs, iron seems preferable, partly for the reasons which plead in general in favour of that material, partly on account of the small degree of thickness it requires. A wooden floor, or a brick floor supported upon an arch, might reduce the height above the floor of the exterior well to such a degree, as to make it necessary either to sink the floor of the well in that part still more, or to increase the width.‡

From their immersion out of the building, the three passages should be covered through the whole length of their course across the external area: that of the inspector, for the sake of obscurity, as well as for the sake of protection in bad weather: the two prisoners' passages on each side, partly for the latter reason, but principally to cut off converse with the cells immediately above; for which reason they must also have a back reaching up all the way to the roof, so as to form a complete case.

When the prisoners have got the length of the lanes, or of the yards on each side, that is, at the least, near thirteen feet distance from the building, the interception of converse must, as it safely may, be trusted to the expedients employed for preventing those in the cells from looking out of their windows.

When the prisoners are a few feet advanced

circumference to a semi-diameter—about six to one: and the galleries would have diminished in effect, to the amount of their height, the height of the wall to which they were attached.

* This comes from the pavement of the exterior area being sunk in that part 1:6 below the level of the internal.

† To distinguish it from that within the building, I call this the *inspector's outer bridge*.

‡ The roof of the line of communication, as it emerges from the building, affords a landing place to the windows of the cells immediately above, by which the prisoners, could they get out of the windows, might at night time find their way into the yards, and be so far on their way to an escape. To obviate this danger, it is evident that the gratings to those windows ought to be constructed with a degree of caution which would not be equally necessary in any other part of the circuit.

It would be tedious to particularize in this manner every little weak spot which the details of such a building may disclose. Wherever they present themselves, the weakness will not be more obvious than the means of remedying it.

The cell immediately over the straits loses, it will be observed, a considerable share of its light, partly by means of the inspector's bridge within side the building, partly by means of the whole line of communication on the outside. Many employments might be mentioned, for which the degree of light remaining after these defalcations, would probably be insufficient: but as employments are not wanting, for which it would certainly be sufficient, the deficiency affords no reason for considering this cell as lost to the purpose of habitation.

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beyond the external area, they come to a door, which lets out upon the open ground such of them as belong to the two yards immediately contiguous on each side; since it would be useless to carry them on to the look-out, only to return them from thence into those yards. If there are no more divisions, no more yards, than these two, here the prisoners' lanes terminate: if there are other yards, the lanes lead on till they terminate in the common central yard encompassing the look-out. The inspector, at any rate, has his door corresponding in situation to those just mentioned.

The *central yard* is a circular, or rather annular yard, encompassing the look-out: it serves for the discharge of the different classes of persons into their respective yards. That the individuals thus meant to be kept separate, may not have it in their power to straggle into the central yard and there meet, the entrances into their several yards are closed by gates or doors. Lest by a mutual approach towards their respective doors, they should obtain an opportunity of converse, the doors are placed, not in the circumference where the walls terminate, but in a set of short partition-walls joining the respective walls at a little distance from the ends—the intermediate portion answering the purposes of the protracted partitions spoken of in Letter II. in the first rough sketch of the building. A wall carried through the central yard, so as to join the look-out, perfects the separation between the male and female side.*

Near to the lateral doors opening from the covered way on each side, will be the situations for the *airing-wheels*:† the numbers and exact situations of which will depend on local circumstances, and on the details of the plan of management pursued.

Hereabouts, too, might be the *temperate baths*, or *bathing-basons*, in which prisoners might at stated hours be obliged to wash themselves. By means of a slight awning, these baths might easily be concealed from the view of the prisoners in the building, while they were fully exposed to the observation of an inspector (or, according to the sex, an inspectrix) from the look-out.

Made long rather than circular, they would be the better adapted to the purpose of enforcing such a continuance in this state of discipline as should be deemed expedient. The prisoner being required to pass through from one end to the other, the number of traverses would thus afford as exact a measure as could be wished for, of the degree of discipline to which it were proposed to subject him.

Of the construction of the *look-out*, it seems hardly necessary to attempt a minute description. It should be polygonal, that form being cheaper than the circular. It might be an octagon; or, were the number of the airing-yards definitively fixed, the number of its sides might be the same with that of the yards, the walls of those divisions corresponding to the angles of the building. The fittest form and size for it would vary, according to local circumstances and the plan of management. The precautions relative to the *thorough light* need not here be so strict as in the prison; the greater distance rendering the figure, when obscured by blinds, more difficultly decernible: and the obscurity would be farther favoured by heightening the elevation. Experiment would easily show what sort and thickness of blind was best adapted to the purpose. If a strict inspection be required, the inspection-lantern already described would furnish a proper model: if a looser were deemed sufficient, a room employed as a work-shop in some sedentary trade, such as that of a tailor or shoemaker, might answer the purpose. In the capacity of apprentices or journeymen, he might have a few of the most orderly and trust-worthy among the prisoners. On working days, according to the plan of management here proposed, he would have nobody to inspect but such of the prisoners as were occupied for the time being in walking in the wheels: at that time he would of course front that way as he sat, and a casual glance stolen now and then from his work would answer every purpose. It is on Sundays, and on Sundays alone, that the prisoners in general would be at certain hours in the yards; and during those periods he might give his whole time and attention to the business of inspection, as it would then be his only occupation.

A male and female inspector might here also be stationed under one roof; whose inspection might, by the means explained in another place, be confined to their respective divisions. This junction and separation would of course be necessary, if a bath for females were placed near the walking-wheel on that side.

As to the degree of spaciousness to be given to the yards: in a general sketch which has no individual object in view, to specify dimensions will be seen to be impossible: principles, with illustrations, are the utmost that can be expected.

The objects to be attended to are, on the one side, *room* and *ventilation*; on the other, *facility* of *inspection*, and *cheapness*.

To estimate what may be necessary for room, it would be necessary first to settle the operations that are to be carried on in the yards, and the articles that are to be placed in them. Such are—

1. Airing-wheels: enough for supplying

* *N.B.* This protracted separation wall is not represented in the draught.

† See the Section on *Airing*.

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water to the building. See the Section on *Airing*.

2. Additional number of airing-wheels: in the whole, a wheel (say) to every 18 persons, or a proportionable number of double, treble, or quadruple wheels. I call the wheel a single, double, treble one, &c., with reference to the number of persons that are to be set to walk in it at once.

3. Machines to be kept in motion by such supernumerary airing-wheels.

4. Bathing-basons, one or two, according to the sexes.

5. Open schools, for Sunday's schooling. See the Section on *Schooling*.

6. Walking or marching parade for Sunday's exercise.

As to ventilation, though a distinct object, it is one that will hardly require a distinct provision. A space that affords room enough for the walking-parade can scarcely be deficient in point of airiness.

In ventilation, much depends upon the form of the ground. A declivity is in this point of view preferable by far to a dead flat. Place the building upon a rising ground: the wall, though a high one, may be but little or not at all higher than the surface of the ground is for for some distance round the building. So far as this is the case, so far the walls afford no obstruction at all to the current of air.

But even in a dead flat, there seems little necessity for bestowing any expense, in giving on this score any addition to the quantity of space absolutely necessary for the marching exercise above alluded to. Noxious trades out of the question, the only imaginable sources of contamination to which the air is exposed are *putridity* and *respiration*. Against the former, sufficient security may be afforded by the discipline of the prison: — no hogs — no poultry — no dunghill — no open drain — no stagnant water. As to mere respiration, it can scarcely be considered as capable of producing the effect to a degree worth notice, in a place ever so little wider than a water-well, if open to the sky.

As to facility of inspection, it is obvious, that the longer you make your airing-yard, the less distinct the view which the inspector will have of a prisoner at the further end of it. But the consideration of the expense will be sufficient to put a stop to the extension of this space, long enough before it has acquired length sufficient to prejudice the view.

In speaking of the *expense*, I do not mean that of the ground; for that, everywhere but in a town, will be of little moment: but the expense of the walls. I speak not merely of the surrounding wall; for, whatever be the height of that wall, the separation-walls, if there are any, cannot, as we shall see, have less. For the surrounding wall, according to the common plans at least, no ordinary height will suffice. But, by doubling the height of your wall, you much more than double the expense; since, if you would have it stand, you must give it a proportionable increase of thickness.

The height of the separation-walls, I have said, must not be less than that of the surrounding wall: why? because if the former join on to the latter, they must be of the same height, or whatever height is given to the surrounding wall is so much thrown away. The attempt, if any, will of course be made at that part where the wall is lowest, which will serve as a step to any part which rises above it. Let a wall of twelve feet be joined by another of six feet: what is the obstacle to be surmounted? Not one wall of twelve feet, but two walls of six feet each. In fortification, the strength of the whole is to be computed, not from the strength of the strongest part, but from that of the weakest.

That the separation-walls should join the surrounding wall, is not indeed absolutely necessary; but whether the discontinuance could in any instance be made productive of any saving upon the whole, seems rather questionable. They may indeed be left short of it to a certain distance; the gap being supplied by a ditch, to which the persons meant to be separated on each side, may be prevented from approaching near enough for the purpose of converse, by a palisade, which may be a very slight one, being intended rather to mark transgression than to prevent it. In the day-time, there will be no possibility of approaching the ditch without detection, since it will be full in view: at night, there will be no motive, as there will be no persons on the other side to hold converse with — no prisoners in the yards. The ditch itself need not be continued far on each side of the wall: but the palisade must be continued all along; for if it were to terminate anywhere, it would be useless; and if it were to join the wall anywhere, it would take so much from the height. But the palisade, however slight, would cost something: and, what is more material, the space between that and the wall would be so much sacrificed; and the greater the space, the more extensive, and consequently more expensive, must be the wall. If, therefore, the surrounding wall should not rise much above the height, which for the purpose of preventing converse it would be necessary to give to the separation-walls, reducing the height of the latter by the help of the above expedient would not be worth the while.

But although no saving should be to be made in the height of the separation-walls, this is not the case with regard to such part of the general surrounding wall as is not accessible to the prisoners. What part that may be, will be immediately conceived by turning

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to the draught—See Plate III. In a line with the projecting front, continue the wall of the building on each side till it meets the two lateral of the four surrounding walls. To this wall, and to every wall that is behind it, must be given the same extra height, whatever that be. But to whatever walling there is *before* it, no greater height need be given, than if there were no such thing as a prison in the case.

Thus much, supposing the necessity of high walls and multiplied divisions. But if my ideas be just, both these articles of expense may be saved: the former, by the mechanical regularity of the airing discipline—See the Section on *Airing*:—the other, by the mode of guarding—See the next Section.*

The less the space is between the look-out and that one of the four surrounding walls that runs at right angles to the direction of the covered way, the nearer the two radii drawn towards the ends of such a wall will of course approach to parallelism. Direct them so as to terminate, not in the opposite wall, but in the two lateral walls that join it at right angles, and you have a long space, which, without departing from the inspection principle, might, if the employment presented any adequate advantage, be converted into a *rope-yard*.

Why introduce here the mention of rope-making? Is it that I myself have any predilection for that business? By no means: but others, it seems, have. My first care is on every occasion to point out that course which to me appears the best: my next is to make the best of whatever may chance to be preferred by those whose province it is to choose. To a gentleman to whose information and advice upon this occasion particular attention appears to have been paid by a committee of the House of Commons,† to this gentleman it occurred that rope-making was of all trades one of the best adapted to the economy of a penitentiary-house. Of the many advantageous properties he attributes to it, a considerable number may, for aught I know, belong to it without dispute. But in one instance, at least, his zeal has got the better of his recollection. In rope-making, "no implement employed that can contribute to escapes!"—To a seaman, a rope is itself a staircase. Will any charitable hand take charge of it on the other side of the wall? over goes the rope one instant—the next, over goes the sailor.‡ And can no other hand support itself by a rope? Was La Tude a seaman? Will the walls of a penitentiary-house be like the walls of the bastile? A vigorous arm will supply the place of practice. I speak but what I have seen.

Rope-making is, perhaps, of all trades known, that which takes up the greatest space. Elsewhere it requires no walls: but here it must not only have walls, but those, too, of an extra height and thickness.

With all this, should any rope-making legislator, or any legislator's rope-making friend, make a point of it, in a Panopticon penitentiary-house, I would even admit a ropery. But in what character? as one of the most—no, but as one of the least promising of all trades. I would admit it—not certainly in the view of favouring, but rather of trying the strength and temper, and displaying the excellence of my instrument. I would take my razor and hack stones with it—not as thinking stone-cutting the fittest employment for razors in general, but in the way of bravado, to shew that my razor can perform what in ancient lore stands recorded as a miracle for razors. I would provide part of my prisoners with this gentleman's ropes; I would arm another part with another gentleman's sledge-hammers; a third part with another gentleman's cast-iron; a fourth with a fourth gentleman's saws, taking my chance for my felons serving their keepers as the children of Israel served the Ammonites.—For what? for security's sake? No: but just as I would set up a sword-cutlery, or a gun-manufactory with a powder-mill attached to it, if any gentleman would show me such a measure of extra profit attached to those trades, as should more than compensate the extra risk and the extra expense of guarding and insurance.

* It may be thought that the walls here spoken of as not requiring any extra height, might be omitted altogether. But besides that they will be convenient for the inclosing of offices and officers' gardens, they are essential to the plan of guarding. For on considering the centinel's paths, it will be easily seen that it is necessary they should be regular, and that one of them should pass by the approach. Add to this, that the contrivance of the approach supposes a wall all round, to serve as a barrier against a hostile mob.

One wall, indeed, which really is not only unnecessary but prejudicial, may be discovered on the draught; into which it was inserted without special instructions, as a thing of course, and suffered to continue through inadvertence.

It is that which runs parallel to, and between, the wall through which the entrance is cut, and that which forms on each side a continuation of the projecting front. A fence in that part is indeed necessary: but instead of a close wall, it ought to be an open palisade.

The former, in contradistinction to the latter, weakens the *command* of the building over the space inclosed; and that as well in a military sense, as in point of inspective force. Suppose a mob to have mastered the wall on either side the entrance, an open palisade exposes them to the ground floor of the building, whereas a close wall covers them.

† See Report of the Felon Committee, printed in 1779.

‡ Even without an associate, a rope, by the help of a brickbat fastened to the end of it, will, I have been assured, carry a man over a wall.

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Protesting, therefore, against this of rope-making, as one of the least eligible of trades for any other prison, I would not, by any peremptory resolution, exclude even this from a Panopticon penitentiary-house. Let Euristheus speak the word, and I will turn in serpents to my infant in its very cradle.—Why? Is it that serpents are the best nurses? No: but because my infant is an Hercules.

Recapitulation of the Horizontal Lengths of the several component parts of the Line of Communication between the lowermost Inspection-gallery within the building and the Look-out in the yards.

I. *Inspector's Passage.*

	F.
1. Inspector's *Inner-Bridge* (over the intermediate area,)	8
2. Inspector's *Drop* (within the circle of the grated passage,)	2
3. Inspector's *Inner-Landing-place* (within the same circle,) . . .	2
4. Inspector's *Straits* (passage through the subterraneous arch under the cells,)	17
5. Inspector's *Outer-Landing-place*, from the termination of the arch to the commencement of the *rising-stairs*, ...	2
6. Inspector's *Rising-stairs*, from the exterior annular area to a little above the level of the ground, . . .	8
7. Inspector's *Outer-Bridge* (over the remainder of the above area,) about	2
	41
8. Inspector's Covered-way, . .	Undeterminable, depending on the magnitude of the establishment and other local circumstances.
9. Steps up to the Look-out, . .	

II. *Prisoners' Passages on each side.*

1. Prisoners' Straits, ...	17
2. Prisoners' Landing-place, ...	2
3. Prisoners' Rising-stairs, ...	8
4. Prisoners' Bridge, about	2
	29
5. Prisoners' Lanes, .	Undeterminable, for the same reason.

The Figure annexed represents an AIRING or MARCHING PARADE. It serves to show how a given number of men may be aired by walking, in the least possible space, without infringement on the Plan of Separation.

		F.
Length of the Parade, say		150
Width, ...		96
Number of feet in each walk, ...		6
Multiplied by the number of parallel walks in the above width, . . .		6
Gives the number of feet occupied by the walks in the above width, . .		36
Number of feet of vacant interval between walk and walk, . . .	12	
Multiplied by the number of intervals in the above width, . .	5	
Gives the total number of feet of vacancy in the above width, . .		60
Sum of the width of the walks, added to that of the intervals, gives the total width as above, ...		96
Number of feet of interval between line and line in the same walk, say . .		6
Number of lines capable of being contained, on the above conditions, in an area of the above dimensions, in the manner represented in the figure, .		146
Multiplied by the average number men in a line, ...		3
Gives the total number of men that may be aired by marching on a parade of the above dimensions, without approaching nearer than as above, ...		438

Each cell is supposed to occupy a distinct line: the numbers in a line being 1, 2, 3, or 4.

The number annexed to each line shows the station occupied by each cell when the figure is completed.

The lines might be marked out by double rows of clinkers; the track of each man by a single row; and the walks, if necessary, by stakes and ropes.

At every turning, the outermost man at one or other side turns a quarter-round, as in the military exercise, while his comrades on the same line, by a short run, gain the new line. Thus the exercise of running is combined with that of walking.

The number annexed to each line shows the station occupied by the inhabitants of each cell when the figure is completed.

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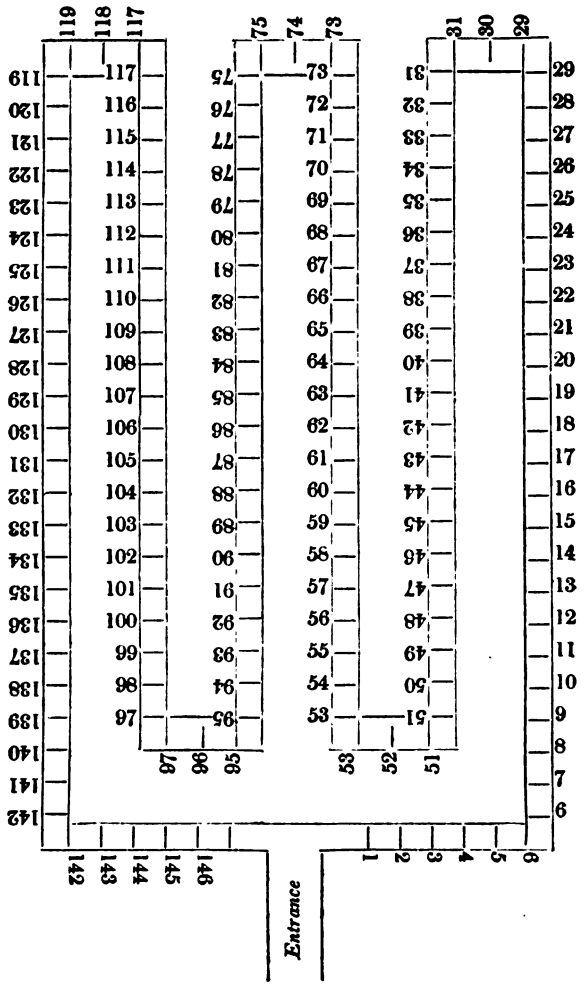

This plan being designed merely for illustration, it was not thought worth while to bestow the pains that would have been necessary to give it a thorough discussion, and clear it altogether from the imperfections that may be observed in it. From this example, it will be easy to accommodate the line of march to the form of the ground; giving it the radial figure, and making the entrance from the central yard. The walks would in that case diverge from one another in pairs at the farthest extremity, like fingers on a hand. But the greater the divergence, the more space will, it is evident, be consumed in waste.

The wheels, which on six days serve for gain as well as air and exercise—would there be any objection to their serving on the seventh for air and exercise without gain? If not, then even the walking-parade, with the expense of the walls with which it must be surrounded, might be struck out as superfluous.

The question would be particularly material in a town, where not only the expense of the walling might be grudged, but the ground itself might be unobtainable.

In such a situation, if the wheel-exercise were thought improper for Sundays, even the roof of the building, might, if made flat on purpose, be made to answer the purpose of a marching parade; only in this case the space not being sufficient to air the whole number of prisoners at once, without breaking in upon

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the plan of separation, the half only, or the third part, can partake of the exercise at a time.

The same situation might, with like management, be made to serve likewise for the schools, proposed to be held, whenever weather will permit, in the open air on Sundays. See the Section on *Schooling*.

SECTION XXI.

APPROACH AND FENCES.

In the contrivance of the fences, I had of course two classes of persons in view: the prisoners within; and hostile mobs, or such individuals as might be disposed to form plans or join in plots for the escape of prisoners, without. To these were added, in the contrivance of the approach, the subordinate keepers; as likewise, though with a different view, the chapel-visitors. While the government or coercion of the first three of these four descriptions of persons was to be provided for, the accommodation of the last, those still better than gratuitous inspectors, who, instead of being paid for inspecting, may be content to pay for it, must not be neglected.

The approach, I make *one* only: a walled avenue, cut through and from the surrounding wall to the front of the building, thrown back purposely to a certain distance — say, for example only, 240 feet, twice the diameter of the polygonal part of the building, neglecting the projecting front. The aperture thus made is closed by a set of *gates*: a small one, close to the *porter's lodge*, for foot passengers; next to that, a larger one, for carriages to go in at; and beyond it, one of the same size as the second, for carriages to return by. At the very entrance, the avenue is contracted as much as it can be, consistently with the above-mentioned purposes; it grows gradually wider and wider as it approaches the building; arrived at a distance equal to the breadth of the projecting front, it stops short. Conceive a square having this front for one of its sides. In the opposite side, the walls that bound the avenue terminate. In the same line terminate two walls or other fences, which, issuing at right angles from the front, bound the two remaining sides of the square. The avenue, though gradually expanded from the entrance to the spot where it falls into the square, wants on each side some feet of occupying the whole width. That interval is filled up on each side by a pair of *gates*, which, being of open work, afford to the building access to, and view of, the spaces on each side the avenue; designed partly and principally for containing offices, and affording small gardens to the officers. In the centre of the square stands a *lamp-post*, or some such object, serving as a direction to carriages in turning; and from this central mark, to the pier between the two gates across the entrance, it might perhaps be found convenient at chapel-times, to keep a strained rope or chain, for the purpose of separating the path of the returning, from that of the approaching vehicles; thus obviating the confusion, which, without such precaution, is apt to arise in a throng of carriages.

The public road runs, according to local circumstances, either in the same direction with the avenue, or else at right angles to it, and parallel to the wall cut through to form the approach. No public highway, either carriage-road or foot-path, runs near to it in any other quarter.

Parallel to the gates, and to the extent of the gates, the road is bounded on the other side by a wall, which may be called the *protection-wall*, and behind it a branch of the road, which may be called the *protection-road*.

I. *Why only one approach to so large a building?*

1. For the sake of *economy*: the more approaches, the more porters.

2. For the sake of *safe custody* and *subordination*: the more exits, the more places to watch, and the greater the danger of escape. And were there more exits than one, all would not be equally under the view of the head-governor. What if he, and the next in authority under him, had each a separate exit under his care? The inspective force would be diminished by one half: on the one side, the subordinate would be withdrawn from under the controul of his principal; on the other, the principal would lose the assistance of the subordinate.

II. *Why throw the building back in this manner, and place it in a recess, rather than close to the road, and flush with the surrounding wall?*

1. For *security*; and that, in the first place, against enterprises from within. Suppose a prisoner, by permission or by negligence, got out and landed at the front of the building: on this plan, what chance has he gained of an opportunity of escape? He is inclosed in a defile, with the building at one end, and the gates that open to it on the other; exposed on one side to the whole view of the front, and on the other to that of the gate-keeper, without whose concurrence the gates can afford him no exit, and the prison habit betraying him to both. On the other hand, suppose a part of the building to have doors or windows opening to the highway: let a man but have got through any one of those apertures, he finds himself at large. What though the part thus bordered by the road should be no part of the place designed for prisoners, but only of the house or lodging of one of the officers, the governor for example?

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Such places may not be always inaccessible to the prisoners, at least to all of them. A prisoner may be there by permission, engaged in some domestic employment; he may have stepped in thither on some pretence; he may have been let in on purpose by the infidelity of some servant of the house. Should even the prisoners be all of one sex, there may be servants of the other. Of a prison so circumstanced, where is the part that can be sure of being always proof against the united assaults of Cupid's arrows and Danaë's golden shower?

2. Against clandestine enterprises from without. What enterprises of this nature can be attempted with the smallest prospect of success? Without procuring the door to be opened by the porter, a man cannot pass the gate; he is then inclosed in a defile as before, reconnoitred all the while from the lodge at one end, and the building at the other. The gate which lets him in might, in the act of opening it, and without any attention on the part of the porter, ring a warning-bell proclaiming the stranger's entrance and approach.

3. Against hostile enterprises by mobs. The enterprises of mobs cannot, like the attempts of individuals, be sudden and secret: they have always a known cause. The guards are everywhere upon the watch. Is mischief threatened? The porter rings his bell — a sentinel fires his piece — the force of the prison is collected in the front. What mob will make any attempt against the gates? No sooner have they begun, than they find themselves exposed to the fire of the whole front; that front more than twice the breadth of the space they occupy, and converging thither as to a point. There needs no riot-act; the *riot-act* has been read by the first man who has forced himself within the gates. The line is completely drawn beyond all power of mistake — all within it are malefactors. The avenue is no public highway; it is the private inclosure of the keeper of the prison: those who force themselves within it do so at their peril.

In the ordinary state of prison-building, all preparations for an attack, everything short of the actual attempt, may be carried on without molestation under the keeper's nose. The rioters collect together in force, in what numbers they think proper, and with what arms they can procure. What shall hinder, or who shall so much as question them? It is the king's highway: one man has as much right there as another. Let them have what arms they will, still who shall question them? Every man has a right to carry arms, till some overt act demonstrates his intention of employing them to a forbidden purpose. Observe now the consequences: The walls of the prison are impregnable; its doors well fortified; windows looking to the highway it has none. But the keeper's doors are like other doors — his windows like other windows. A bar or a log will force the one — a stone or push will lay open the other. Where the keeper enters, there may the rioters enter, and there may the prisoners get out, when they are in the keeper's place. The cuckoo is completely hedged in, except at one place which is not thought of.

At Newgate, the building, including the keeper's house, runs along the public footway: and the fate of that edifice at the disgraceful era of 1780 displays the consequence. No impediment does it present, natural or legal, that can hinder any single man, or any body of men, from introducing their eyes or hands close to the keeper's windows. A little army may come up with clubs and iron crows to the very door, ready to force it open; and till the attack is actually begun, there is neither right nor obstacle to impede, much less power to hinder them.

All the other prisons in London, that I recollect, the King's Bench amongst the rest, are in the same predicament. Had the contrary precaution been observed, the tragedy of St. George's fields would hardly have been acted. The ill-fated youth, whose death drew forth in its day such a torrent of popular discontent, would not have fallen, or his fall would have been acknowledged to have been not undeserved.

In a great town, the ground may not always admit of giving the remedy its full extent; though, to a certain extent, and that sufficient to give a vast advantage over the common plans, it might be made use of almost everywhere.

Even Mr. Howard's plan, though uncircumscribed by any considerations of local necessity, even Mr. Howard's plan of perfection in the abstract, has overlooked it. The piles of building allotted to the convicts are indeed placed all of them within, and at a distance from, the surrounding wall; but lodges for porters, a house for a chaplain, and another for a steward or storekeeper, form part of it. Alongside, for anything that appears, runs the public way: nor is there any thing to hinder a mob of rioters from forcing themselves in at the chaplain's and the steward's door and windows, till the outrage is begun.

Thus it stands upon the face of the engraved plan. His after thoughts, so far from obviating the inconvenience in question, double it. His last opinion is in favour of "a spacious walk, clear of buildings, through the centre, with three courts on each side, and the chapel and chaplain's apartments at the opposite end, facing the governor's own apartment."* Is the chaplain, then, to have an outlet at his end, as well as the governor

* On Lazarettos, p. 229.

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at his? This will require another pair of lodges (for the plan gives two) and at least one other porter. At any rate, the chaplain and his family are out of the reach of lending an inspecting eye to observe the approach of those who come on the design, or with the pretence of visiting the governor, his family, or his servants. The inspective force at that end is *pro tanto* diminished by the removal of that constituent part of it. What Mr. Howard's reasons were for this change of opinion, he has not told us.

No one can be more anxious than Mr. Howard to prevent every part of the building where prisoners are lodged from having windows to the street. Why? Because such windows, besides affording converse, will let in spirituous liquors, not to mention implements for escape. Windows to the governor's house, or the chaplain's, will not indeed let in spirituous liquors, or any thing else, into the prison clandestinely, but they will let in armed deliverers openly, where they are in force.

III. *The avenue—why contracted at the entrance?*—The narrower the entrance, the less the expense of the gates which close it, and the more perfectly it lies within the command of the porter. At the spot where it reaches the building, were it no wider than it is at the entrance, it would scarce afford turning-room for carriages, much less the standing-room which would be requisite at church time. Were it of less width than the front, so much of the front as was excluded, so much of the inspective force which that part of the building furnishes, would be lost.

Of the total area inclosed by the general surrounding wall, the magnitude must of course depend upon a variety of circumstances; some of a more general, others of a local or otherwise particular nature. Behind the building, it will be occupied by the prisoner's yards, of which in the last section. In front of the building, on each side of the approach, it will be occupied by exterior offices and officer's gardens.

On the outside all round, at a small distance (say 12 feet) from the wall, runs a slight *palisade* of open work. The intermediate space receives four centinels, whose paths flank and cross one another at the ends. The walls, instead of forming an angle, are rounded at the junctions. The palisade will serve as a fence to the grounds on the other side: but highways on which the public in general have a right to pass, whether carriage-ways, or simple foot-ways, are kept from approaching it as far as may be.

At two of the corners, the place of the palisade might be occupied by two guard-houses: each with two fronts to flank and command the two centinel's walks. To one of these I should give such a situation and such a height as to enable it to command the airing yards: but at that quarter in which it would be at the greatest distance from those destined for the reception of female prisoners, if that sex be admitted, it might have a platform in that situation, and in that elevation, without having any windows either way. It might have a communication with the airing-yards, to be made use of in case of alarm and demand of succour from the keepers in the building or the yards. The communication might be effected in any one of several ways: by a draw-bridge, by an under-ground passage, or by a ladder kept under lock and key; the key always in the hands of the commanding officer. To prevent converse between the soldiers and the prisoners, the doors opening into the platform (for windows that way it has none) ought to be locked up, and the key kept in the same custody. It is for this same reason that I attach it, not to the wall, but to the palisade which is detached from the wall.

IV. *Why the palisade?*—To cut off from the public in general all facility and all pretence for approaching the wall near enough to attack the centinel, to hold converse with the prisoners in the yards, or to plant ladders or throw over ropes to enable them to escape.

V. *Why of open work, rather than close?* a wall, for instance, or a park-pale? — For cheapness; and that nobody may approach it without being seen.

VI. *The centinel's walks, why crossing and flanking each other?* — That each centinel may have two to check him. Who in such case would venture or offer to bribe any one of them to connive at projects of escape? The connivance of any *one*, or even any *two*, would be unavailing.

VII. *The walls—why rounded off at the meetings?**—To avoid giving the assistance which angles afford to the operation of climbing up in the inside. Add to which, that the greater the space thus rounded off, the greater the part of each centinel's walk which is laid open to the view of the two others.

As to the height of the wall, and the thickness, which will be governed by the height, the quantum of expense necessary on this score would depend upon the decision made as to the resorting or not resorting to the military establishment for a guard. With this assistance, added to that of the palisaded walk, walls of very moderate height would be sufficient: say 8 or 9 feet, about 2 or 3 feet above the height of a tall man.† This height

* For this precaution I am indebted to Mr. Blackburn. In what instances, if any, he has himself applied it, I do not know. I took the hint from a history he used to tell of a man who, by the assistance of two walls meeting at a right angle, and an instrument of his own contrivance, used to convey himself in this way over the wall of the King's-Bench prison in St. George's Fields.

† Or would not 12 feet be deemed necessary? since one man might mount on the shoulders, and perhaps for a moment on the head of another.

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would be sufficient to prevent any intelligible converse between prisoners and centinels: forbidden conversation will not be carried on in a loud voice, in the ears and under the eyes of the superiors who forbid it. Without this assistance, it might be rather difficult to draw the line.

By rejecting this assistance, the requisite quantity and expense of walling that *might* be thought requisite, might be increased in another way. The higher the wall, the more obstructive to ventilation. The higher the wall, the more ample the space that on that account it might be thought necessary to inclose within it; and the greater that space, the more walling it would take to inclose it.

Did it depend upon me, though I would get a military guard if I could, yet even without such assistance, trusting to so many other safeguards, I think I would put up with an 8 or 9 foot wall. In the look-out, sits constantly an inspector, armed and instructed, and commanding all the yards. By a bell, he summons to his assistance at any time the whole collected force of the prison.

VIII. *To what use the protection-wall, and the protection-road?*—The use is tolerably well indicated by the name. Behind the wall, and in the road, in case of an attack by a riotous mob upon the gates, as many passengers as do not choose to take part in it will find shelter; and the attack may be opposed with fire-arms from the building with the less scruple, as no one can suffer from it whose guilt has not made him the author of his own fate.

And would you wish, then, to see a perhaps well-meaning, though culpable multitude devoted in heaps to slaughter? No, surely: though better thus than that the prison should be destroyed, the prisoners turned loose upon society, and justice struck with impotence. But the truth is, that nothing of this sort will happen: the more plainly impracticable you make the enterprise, the surer you may be that it will never be attempted. Prevention is the work of humanity. Cruelty joins with improvidence in making the instruments of justice of such apparent weakness as to hold out invitation to a destroying hand.

This is perhaps the first plan of defence against rioters, of which the protection of the peaceable passenger ever made a part—the first in which the discrimination of the innocent from the guilty was ever provided for or thought of.

In the instance of every prison—of every public building as yet existing—an attack once begun, what is the consequence? The guilty must be suffered to perpetrate without controul their forbidden enterprise, or a continual risk incurred of involving the innocent in their fate. What is the effect of street-firing? a medley massacre of rioters and passengers, of guilty and innocent, of men, women, and children.

The *maximum* of economy, with regard to the figure of the ground, and thence of its surrounding fences, remains yet to be suggested; and situations may be conceived, in which it would not be irreconcileable with convenience. The quadrangular figure is that which will naturally have first presented itself. But three lines are enough to inclose a space. The ground *may* therefore be *triangular;* nor, if regularity and beauty, in as far as it depends upon regularity, are disregarded, is it necessary that of this triangle any two sides should be equal. An equal legged-triangle, with the legs longer than the base, is to be preferred to an equilateral triangle, much more to a triangle having the angle opposite the base equal to or greater than a right one. The reason is, that the figure may have a space running out in length, in order to afford a sufficient length of avenue; the point or apex being cut off, in order to form the entrance.

The number of the centinels, too, if the military plan of guarding be approved of, and if the difference in point of number be an object, will, in this way, be reduced from four to three.

With or without a guard, the inspection principle, seconded by other assistances, we have seen, or shall see, relative to the plan of management, supersedes the necessity, without detracting anything from the ingenuity, of Mr. Blackburne's expensive system of mural fortification. "If a man gets to the other side of the wall," said he to me one day, as he has said to others, "it must be by getting either through, or under, or over it. To prevent his getting through, I make it of stone, and of stones too massy to be displaced, as bricks may be, by picking. To prevent his getting under, I make a drain. As he undermines, no sooner is he got within the arch, than out flows the water and spoils his mine." To prevent his getting over, there was a system of precautions, one under another, too long to be repeated here. Sound logic was here combined with admirable ingenuity; in all this there might be nothing which, on a certain supposition, might not be necessary. What is that supposition?—that in some cases a number of prisoners, in others at least one prisoner, have time almost without stint to carry on their operations unobserved. In all other modes of construction, under all other systems of prison-management, the supposition speaks the truth. But under the Panopticon mode of construction, under the plan of management which it supposes and provides for, is this the case?—exactly the reverse. What prisoner carries on plans of escape under a keeper's eye?

In a dark night, it may be said, *the benefit*

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of the inspection principle fails you. Yes, if there be no lamps sufficient to light the wall; —yes, if there be no *watchman* patrolling in the house. The question then lies between the expense of this system of complicated circumvallation, and the expense of lighting, or rather the expense of providing a single watchman to go the rounds. I say, that a watchman will be sufficient security without even lighting on purpose, and that, in an establishment like this, a watchman need cost nothing: since the people necessary for guarding and instructing by day, will be sufficient to watch at night by turns. Even in the darkest night, and without artificial light, can a prisoner, without tools, at no more than 25 feet distance from the watchman, first force through the glass of a window, and then through iron bars on the other side? Will he hazard any such attempt, when, supposing him against all probability to succeed, there is still a wall of 13 feet high for him to climb (I mean that which bounds the exterior well,) and beyond that, another?

To get clear altogether of the obstruction afforded by walls to ventilation, it has been proposed* to dig a ditch, and to set down the wall at the bottom of the ditch. The expedient seems unnecessary, the expense of it considerable, and the inconvenience material and unavoidable.

The inconvenience is, that whatsoever it may do with regard to security, it gives up seclusion. Of what breadth must your ditch be? A hundred, two hundred feet, would not preclude converse with the ear; nor four hundred feet, nor a thousand, with the eye. The grounds all round would be a continual rendezvous for the associates and confederates of the prisoners; that is, for all sorts of malefactors. It would be a continual scene of plans of mischief, and plots for escape. What should hinder a man on the outside from tossing over a rope or a rope-ladder to a prisoner prepared to receive it? what should hinder twenty men from doing the same thing at the same time?

How is the ditch to be constructed? If the sides are perpendicular, they must be supported by brick-work, or the earth will be continually washing and crumbling in, till it reduces the depth of your ditch, and consequently the height of your wall, to nothing. Are they to be thus supported? Then, besides the expense of an enormous ditch, you have that of two walls instead of one. Are they to be sloping without brick-work? The width of this enormous ditch must then be enormously increased, and still the obnoxious effect will be gradually produced. By the prisoners, at least on their side, everything will be done, that can be done, to accelerate it. Among their friends, too, on the outside, to contribute a stone or an handful of earth, will be a pious work.

At any rate, you have on each side a receptacle for stagnant water. Which would be the greater?—the service done to health by the sinking of the wall, or the detriment by the accumulation of this water?

It would be incompatible with the mode of guarding above proposed, by centinels inclosed in inaccessible lanes; unless stationed at such distances as would occasion an enormous addition to the length of their walks, and to the quantity of ground consumed; for it would be altogether ineligible to bring the guards so near as to possess an easy intercourse with the prisoners.

Were it indeed worth while, the advantage in point of ventilation expected from this idea, might be obtained by a partial adoption of it, with the help of one of the precautions already indicated. It would not be necessary to lay the space open all round: it would be sufficient were it laid open at one end, and that end might be narrowed in the manner of the approach as above described. But at that end, the property of the ground on the other side, to a very considerable distance, would require to be attached to the establishment, in such manner that no stranger should have it in his power to approach near enough to hold any sort of converse, either with the prisoners, or even with the centinel; whose path must also be at such a distance from the nearest spot to which they can approach, as to prevent all converse between him and them, in a voice too loud to escape the ear of the inspector in the look-out.†

* By the late Dr. Jebb, in a pamphlet written on purpose.

† Prisons are not by any means the only buildings to which this mode of exterior fortification (if it be doing justice to a precaution so simple and unexpensive to style it by so formidable a name,) might be applicable with advantage.

With a view to *inspection*, it might be applied to all such public establishments as, on account of their destination, of their importance, their magnitude, and their destructibility, are particularly exposed to the clandestine enterprises of foreign emissaries; such as public magazines and dock-yards. The approach should be so constructed, and the officers' houses and stations so disposed, that every strange face should have the gauntelope to run, as it were, through all their eyes, and that any instance of negligence on this head, on the part of any one of them, should be exposed to the observation of all the rest. Had a plan like this been pursued in Plymouth rope-yard, the sad destruction to which that important magazine was devoted in 1776, by the hands of a wretched incendiary, might perhaps never have had place.

With a view to *defence against open hostility*, it might be applied not only to every prison, but to every other building, public or private, which by the provocation it holds out to rapacity or popular antipathy, is liable to become the object

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SECTION XXII.

MEANS OF SUPPLYING WATER.

Two sources of supply present themselves: the rain-water collected on the roof; and common water, such as the situation furnishes, to be forced up by the labour of the prisoners in the airing-wheels.

The first supply is not a constant one, and will go but little way towards answering the exigencies of so numerous an inhabitancy. It must, however, be carried off at any rate, and any one of the eight iron tubes that form the supports of the inspection-tower, will afford a channel adequate to the purpose. Branches from this main would serve to convey the water to reservoirs in or near to the kitchen and the laundry on the sunken floor.

The only combustible parts of the building, or rather the only parts of the building affording a few combustible materials, will be the inspection-lodge, the inspection-galleries, and the chapel-galleries. By way of provision against such accidents, a *fire-engine* should be kept in a place contiguous to the central area, with pipes communicating either with the reservoirs above mentioned, or with the more copious and certain ones, which supply the water that is forced up by the wheels.

To receive *this* water, an annular cistern runs all round the building. It is placed immediately under the roof, and within the outer wall. The wall affords it support; the roof, a covering from dust and any other matters that might foul the water. Under it run down, in a perpendicular direction to the bottom of the building, at the places where the partition-walls join the outer wall, piles of iron pipes serving as mains, one placed between, and serving for, every two piles of cells. From each of these mains run 12 short branches with a cock to each, one to each of the twelve cells. Of these mains, which for 19 cells on a story cannot be fewer than 10, supposing none to be wanting for the dead-part; two, by the help of so many branches running over and across the exterior area, will serve likewise for conveying the water up by the pumps worked by the wheels.*

Shall the whole supply of water be carried up to the top of the building? or shall the quantity required for each story of cells, be carried no higher than is necessary to convey it to those cells? The latter arrangement would save labour, but it seems questionable whether upon the whole it would be the most economical one. Instead of one cistern, it would require six, each of which must have its supports running round the building; and though each would require but one sixth part of the capacity of the general cistern, it would require almost as much workmanship, and much more than one sixth, perhaps as much as one-half, of the materials.† To form a precise statement of the comparative economy of the two plans, compute the value of labour saved by that which gives six particular cisterns, and set against it the probable annual average of the extra repairs, added to the interest of the extra capital which it would require.‡ But a more simple, and what seems to be a decisive consideration, is the insecurity that would result from these annular cisterns running round on the outside, one under every story but the lowest: they would be so many ladders to climb down by; from whence would also result the necessity of the further expense of having strong bars to those stories of cells, to which, upon the present plan, as already observed, no such guards are necessary.

As to the particular mode of conveying the water to the cistern, it is a topic I pass over, as bearing no relation to the particular construction or destination of the present building; with only this remark, that, as the height is more than double that to which water can be raised by the pressure of the atmosphere, some other sort of pump than the common lifting one must be employed. Forcing pumps I observe employed in the New St. Luke's Hospital, and proposed by Mr. Howard in his Plan of a Penitentiary-house.

SECTION XXIII.

OF THE MODE OF WARMING THE BUILDING.

THE possible differences in the mode of ap-

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of lawless violence. A money-bank, a great corn-magazine, a place of worship belonging to any obnoxious sect, a new erected machine which appears to threaten a sudden reduction in the price or the demand of any kind of labour—may afford so many examples. With these precautions, Dingley's saw-mill, for instance, for which the nation was charged with so heavy an indemnity, would probably have escaped.

I speak not here of the mode of guarding by centinels—a species of protection which could only be afforded to public establishments, and to such establishments as were of adequate importance. I speak only of the mode of constructing the approach: its unity—its situation in a walled recess—that recess as deep as the ground will allow—contracted at the entrance—and commanded by as many officers' houses and stations as can be brought to bear upon it—gates of open-work—and on the other side of the road a protection-road—covered by a protection-wall—all other roads, besides that which the approach opens to, kept at a distance.

* To adapt them to this double purpose will require some little contrivance, but too obvious to need particularizing.

† I say six; for if it did not answer to have so many as six, by the same rule it would not answer to have any more than one.

‡ There would, besides, be the expense of the

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plying artificial heat to a building by means of culinary fire, may be comprised in the following short analysis: It may be either *open* or *close;* if close, either *unventilative* or *ventilative*. The open, in which the fuel is burnt on hearths or in grates, with or without the benefit of a chimney, is that most in use in our three kingdoms. The unventilative is exemplified in the Dutch, Russian, and Swedish stoves; and in England in those used for hot-houses, and in those used in dwelling-houses and other buildings under the name of Buzaglo, who first brought them in vogue: the ventilative, in the stoves called Dr. Franklin's, or the Pennsylvania stoves, and in those for which Messrs. Moser and Jackson* have enjoyed a patent for some years.

The common, or open mode, is what. on account of the expense, nothing but absolute necessity would justify the employment of in a prison. Expense of chimneys, grates, and other fire implements; expense of fuel, and of the time employed in conveying it: these expenses must be multiplied by the whole number of cells; for whatever need there is of it for any one, the same is there for every other. Even the mischief that might be done by fire, through design or carelessness, secure as a building thus constructed is from such mischief in comparison of an ordinary house, is not altogether to be neglected.

The second, or unventilative method, besides its being far from a pleasant one to those who are not accustomed to it, is by no means exempt from the suspicion of being unfavourable to health. The heat subsists undiminished, no otherwise than in as far as the air in the room remains unchanged: calefaction depends upon the want of ventilation. The air will not be as warm as is desired at a certain distance from the heated stove, without being much hotter than is desired in the vicinity of it: between the two regions are so many concentric strata, in one or another of which every sort of putrescible substance will find the state of things the most favourable to the prevalence of that noisome and unhealthy fermentation. The breath and other animal effluvia, while they are putrifying in one part of the room, may be burning in another. The unchanged and unchangeable air is corrupted; the lungs, the olfactory nerves, and the stomach, are assailed in all manner of ways at once, by empyreuma, by putridity, and by respiration.†

In the different modes of producing these noisome effects, there are degrees of noisomeness. An iron stove is worse than an earthen one: it contracts a greater degree of heat; and the vapour produced by the solution of a metal in burnt animal or vegetable oil, is an additional nuisance, over and above what an unmetallic earth will produce.

Over these impure methods of obtaining heat, the *ventilative* is capable of possessing a great advantage. The air which is to receive the heat being continually renewed, may be brought from the pure atmosphere without; and instead of being stagnant, flows in in a perpetually-changing stream. Instead of burning in one part, while it is freezing in another, the air of the room is thus rendered throughout of the same temperature. A succession of cold air from without is the less necessary, as the warm air, what there is of it, is not less pure;‡ and this pure, though heated air, if introduced, as it ought to be, from the lower part of the room, helps to drive up before it, to that part of the room which is above the level of the organs of respiration, that part of the air which, by having been breathed already, has been rendered the less fit for breathing.

By the Pennsylvanian stoves, these advantages were, however, possessed in but an imperfect degree. — Why? — Because the *warming-chamber* was a metallic one; it was of iron. By partitions made between an iron back to the grate, and another such back, or the brick-work behind, the air was made to pass through a long, though tortuous channel of that metal, in a too highly heated state.

In the room of the metal, substitute a pure and unmetallic earth, the mischief has no place.

The misfortune is, that by means of earth alone, the operation has not hitherto been found practicable, unless perhaps it be upon a large scale. In iron, your warming-chamber may be very thin, is soon heated, and is not liable to be put out of order by the heat. In earth, that receptacle, if thick, that is, of the thickness that must be given to it if made of

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bringing so many pipes through the outer wall of the building.

* Ironmongers in Frith-street, Soho.

† Get the stove heated upon your entrance into a German inn: in about half an hour you perceive an abominable stink; in another half hour, a slight degree of warmth; in a third, the heat begins to be comfortable; in a fourth, it is become suffocating. Open a door or window for relief: in rushes the air in partial gusts, and gives you cold.

In hot-houses, though the unpleasant effects of this mode of warming are perceptible to many people, they are however less so than in common dwelling-rooms; hot-houses being so much less inhabited by animals, whose only effect on the air is to taint it, than by vegetables, which, howsoever they may vitiate it in certain ways, are found to purify as well as sweeten it in others.

‡ It is suggested to me by Dr. Fordyce, that in such a building matters might be contrived so that scarce any air should enter anywhere that had not passed through the *warming-chamber*. I make use of that word to express the receptacle through which the air is to be made to pass in order to receive the heat.

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bricks, is a long while in heating, a great deal of the heat is absorbed and lost in it; it gives out its heat with difficulty to the air, which, before it has had time to take up a sufficiency of the heat, is passed through and gone;* add to which, that in joining the bricks, mortar must be used, and this mortar will be liable to shrink and crack by the heat, and lose its hold. On the other hand, if the earth be thin, as in retorts and crucibles, it will be liable to break by accidental violence, or crack by change of temperature; and, at any rate, it will not receive the heat from the fuel, or communicate it to the air, so soon as metal would.

The warming-chamber, or set of warming-chambers, employed by the artists above mentioned, is calculated to obviate both those inconveniencies. It consists of earthen retorts, open at both ends, and inclosed in iron ones. The air which is to be heated, passes through the interior earthen vessel without coming in contact anywhere with the exterior iron one. The iron retort, being that which alone is exposed to the immediate action of the fire, defends from accidents the earthen one within. The earthen one, being the only one of the two that is in contact with the air, defends that element from the contaminating influence of the heated metal on the outside.

The ventilative plan, modified in such manner as to avoid the use of iron for the inside of the warming-chamber, at least of iron in a too highly heated state, being determined upon, the question is, how to apply it in such a building to the most advantage?

The first expedient that occurs is the making of what use can be made of the fires employed for the preparation of the food. From this source, any quantity of heat might doubtless be obtained; but whether in such a situation it could be obtained to any considerable amount upon advantageous terms, seems rather disputable. In ordinary kitchens a good deal is produced, more or less of which might be employed perhaps in this way to more advantage than it is in common. But in a building of this form, and designed for such inhabitants, if the heat employed in the preparation of the food were disposed of to that purpose to the best advantage, the quantity that would remain applicable to any other purpose would, I believe, turn out to be but inconsiderable. That it would not be always sufficient for that of the warming of such a building I am altogether confident.†

The deficiency must at any rate be made up by stoves to be provided on purpose. In

* Could not the means be found of detaining the air with advantage till it had imbibed a sufficient degree of heat—for instance, by a pair of valves? This is one of many points that might require to be considered.

† The most economical mode of dressing food by culinary fire, is either *baking* or *boiling*.—Baking, if performed upon the most economical plan, might be conducted in such a manner as not to afford any heat at all applicable to any other purpose, as will be seen below. The most economical mode of boiling is in what are commonly called *coppers*,—because usually made of that material—vessels bedded in brick-work, with a place for fuel underneath, closed by a door which is never opened but for the introduction of the fuel. In this way, a small proportion of fuel, comparatively speaking, serves, scarce any of the heat being discharged into the room.

On the common plans, the door consists of a single iron plate. It might be made double: consisting of two parallel plates, an inch or so asunder, with a bottom between: the interval might be filled up with sand, or some other pure earth that is a worse conductor of heat, if any such there be. The heat would thus be the better kept in, and the outer partition of the door might be made to receive so little of it as not to contribute in the smallest degree to the contamination of the air.

The heat contained in the steam raised by the boiling, should not be suffered, as in private kitchens, to escape in waste. It should be collected, and applied by tubes issuing from the covers of the coppers, after the manner of a *retort* or *still-head*. In proportion to the quantity of the provision that could thus be dressed by steam, would be the quantity of heat that would be saved. The steam vessels would be ranged in front of the boiling vessels, upon an elevation somewhat higher. The boiling vessels, in order to catch as much of the current of fire as possible in its way to the chimney back, should extend as far back as was consistent with convenience. Hence, too, another advantage: they would have the more surface, and the more surface the more steam they would yield to the steam vessels with a given quantity of heat in a given time. The better to confine the heat, it might be worth while, *perhaps*,[a] to make the steam vessels, as also the covers and necks of the boilers, double, with a lining of some badly conducting substance, such as flannel or feathers, between the parallel plates.

The following fact, communicated by an intelligent and reverend friend, will help to show how far any attention that can be paid to the confinement of heat is from being a trivial one:—

In the parish of P——, in the county of W——, live two bakers, T. W. and T. R.—T. R.'s oven is better protected than that of T. W.; that is, so situated and circumstanced, that whatever heat is introduced into it is better confined within it, less drawn off from it by surrounding bodies. Observe the consequence:—To bake the same quantity of bread takes upwards of three times the quantity of fuel in the badly protected oven, that it does in the other.

The following are the data, in the precise state in which they were given; from whence the accuracy of the calculation may be judged of:—

In T. W.'s oven (the badly protected one) it takes 15 pennyworth of wood to bake 40 gallon loaves.

In T. R.'s, it takes but 8 pennyworth of wood (4 faggots at 2d. each) to bake 50 gallon loaves;

[a] Dr. Fordyce, from experience, says *certainly*.

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this view, the sort sold by the ingenious artists above mentioned, present themselves as the most eligible yet known.

What, then, is the degree of artificial heat which the whole of the apparatus employed should be capable of maintaining?—what size and number of stoves would be necessary to insure it?—from whence ought the air to be taken into the warming-chamber?—whereabouts to be discharged from it?—how to be made to visit every cell?

As to the number of degrees of extra heat which the apparatus should be capable of affording, it should hardly be less than 40 of Fahrenheit's scale. Forty added to 32, the degree at the freezing point, would make 72, 17 degrees above the height commonly marked *temperate*. But in time of frost, the heat is commonly more or less below the freezing point: one instance I remember of its being so much lower as 46 degrees; 14 below 0. This, it is true, was for a few hours only, and that in the open air, and in a situation particularly exposed. And in a building where the kitchen fires might at any rate afford something, and the warmth of so many bodies, added to that of so many lights, would afford something more, and where the thickness of the walls would afford so much protection against sudden vicissitudes, no such very extraordinary deficiencies seem probable enough to be worth providing for. My learned adviser, above mentioned, thinks I may venture to set down the lowest degree to be apprehended as 25. Forty added to this makes 65; 10 degrees above the temperate point. This may be more than will ever be necessary. But in a permanent provision, some allowance should be made for accidents, and in a business of such uncertainty, still more for miscalculation. Officers, it is to be remembered, not less than prisoners, must be kept in view. Should necessity be the only object to be provided for in the one case, comfort and custom must be attended to in the other. Happily for the least regarded class, in a building of this form, to be warmed in this manner, very little distinction in regard to this important branch of comfort can be made.

As to the number and size, the seven supports (one of the eight being made use of as a water-pipe) afford so many chimneys, each of which is capable of receiving its stove. But how many out of the seven would be necessary, and those of what size? Experience would determine: but as a provision must be made in the construction of the building antecedent to any experience that can be obtained in the building itself, *data* collected from experience of other buildings must be looked out for. Such *data* are not altogether wanting. A single stove of Moser and Jackson's construction, being employed in St. George's Church, Bloomsbury, raised the heat *eleven* degrees of Fahrenheit's scale, and it did not appear that it was able to raise it any more. To produce in that church 40 degrees of extra heat, the number above fixed upon for our prison, it would therefore require *four* such stoves. What follows?—That to ascertain, *a priori*, from the above *datum*, as well as may be, the size and number of stoves of the same construction necessary for our building, three other *data* would be necessary: the dimensions of the above stove; the dimensions of the inside of that church; and the dimensions of the inside of the Panopticon proposed; noting, withal, that the quantity of glass in the central sky-light, in the annular sky-light, and in the cell windows, added to the number of the partition-walls between cell and cell, would probably lay the Panopticon under some little disadvantage in comparison with that church.

In the above manner, some conjecture may be formed relative to the total quantity of calefactive power that would probably be requisite: I mean, of the sum of the contents of the warming-chambers, in whatever manner they may be disposed.

But when the sum total of the contents is fixed upon, the number and relative size of the several warming-chambers is not a matter of indifference. Equality of distribution requires that the number should be as great as possible, and the capacities of the several warming-chambers equal. Eight supports, that is, eight chimneys to the twenty-four piles of cells, would give a stove to every three piles of cells. The dead-part occupying the space of five piles of cells, the middle one of the three supports that look to the dead-part would be the proper one to give up, and make use of as a water-pipe; the seven others would afford seven stoves among nineteen piles of cells.*

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and when he bakes a second time the same day, it takes but half the quantity.

In a vessel consisting chiefly of iron, weighing upwards of a ton, contrived for the purpose of hatching eggs, Dr. Fordyce, many years ago, produced by a single lamp of the smallest kind in use, and communicated to the iron, a permanent degree of heat equal to that of boiling water. In the same vessel, by the same means, he produced an addition of heat to the amount of 60 degrees, raising the temperature from 40 to 100 in a large space in which a constant current of air was pervading every part. The use of feathers, supposed to be the worst conductors of heat existing, was the contrivance on which the production of those effects principally depended.—Suppose the knowledge thus gained applied to the purpose of dressing the food in the manner of an oven, what would be the surplus of heat applicable to the purpose of warming the building? None.

* Total capacity out of the question, the mere number would not raise the price to more than

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Will the distribution thus made be sufficiently minute? Experience alone can decide with certainty. Of the three piles of cells corresponding to each stove, the middle one, if there were any difference, should receive more heat than the other two. But this difference I should expect to find little or nothing; and if it were but small, it would be rather a convenience than otherwise: varieties of temperature might thus be adjusted to differences with regard to employment, health, constitution, and good behaviour.

At its exit from the warming-chamber, shall the heated air be suffered to take its own course, or shall it meet with a tube to conduct it to the part at which it begins to be of use? This, too, would be matter of experiment, and the experiment might be performed without any considerable expense. Terminating in the nearest part of the intermediate well, each tube would require about 14 feet in length. For the materials, the worst conductors of heat that would not be too expensive, should be selected: a square pipe of four thin boards of that length, each four or five inches over. These might be covered with a case of loose cloth, of the texture of the warmest blanketing, which, to keep off the dust, and contribute still more to the confinement of the heat, might be enclosed in a similar tube. If by the help of these *radial* tubes, the distribution were not found equal enough, they might be made to terminate in a *circumferential* one of similar materials: the whole of the *channel of communication*, or *discharging duct*, as it might be called, would thus represent the exterior part of a wheel, composed of hollow spokes terminating in a hollow felly. The felly thus constituted should be pierced at equal and frequent intervals with equal apertures, the sum of which should be equal, and no more than equal,* to the sum of the apertures of the radial tubes.

Why these radial tubes? since, as far as they extended, they would prevent the horizontal distribution of the heat, and, though composed of such materials as to absorb as little of it as possible, they would at any rate absorb some. — For this reason: that without them a great part of the air, indeed the greatest, by mounting directly to the ceiling of the sunken story, would be already four or five feet above the floor of the lowest story of the cells: and the ceiling, as well by the nature of its materials as by its relative extent of surface, would absorb beyond comparison more of the heat than would be absorbed by the tubes.

The *horizontal* distribution of the heated air being thus provided for, *how to provide for its distribution in a perpendicular direction* among the six stories of cells in the same pile? For if no particular provision were made, the natural tendency of the heated air being to make its way out by the shortest passage, the greater part of it would mount up perpendicularly to the sky-light, where it would necessarily find chinks at which it would make its exit, without ever having visited the cells.

To prevent this aberration, and to ensure a regular draught through every cell, I insert a chain of tubes reaching from bottom to top, but with regular interruptions.† In the floor of each cell of the lowest story of cells, close to the front wall, at an equal distance from the two side-walls, and consequently at the crown of the arch, I leave a round hole, say four inches in diameter, passing through the brick-work into the sunken story below. To this hole I adapt a hollow tube of thin cast iron, of the same diameter. This tube is continued in height to within a few inches of the ceiling above; which brings it to between eight and nine feet in length. Arrived at that height, it terminates in a horizontal mouth, which may be closed by a sort of grating, transformable at pleasure into an unperforated plate.‡ Between this mouth and the lower end of the tube, is a wire grating, to prevent correspondence by papers. Immediately over this tube, is the open end of a similar tube with an expanding aperture, flush with the ceiling, and consequently at a few inches distance from the mouth of the first-mentioned tube; partly for the purpose of inviting the current that way in the same manner, partly for the sake of conveying the breathed air of that lowermost cell into the upper region of the next above it; and so all the way up.

The uppermost of all this chain of tubes runs through the roof, and opens immediately above. It may be there covered with

24½ guineas: the price of one of the least size sold by Moser and Jackson being no more than 3½ guineas; but the quantity of calefactive power obtainable from seven such small stoves would probably go but a little way towards furnishing 40 degrees of heat to such a building.

* If greater, the heated air might be discharged at the nearest part of the circumferential tube, before it had attained the most remote.

† For the general idea of a set of perforations for this purpose, and a view of the necessity of employing them, I am indebted to the obliging suggestion of Dr. Fordyce.

‡ A neat contrivance for this purpose is employed by Messrs. Moser and Jackson. Out of a circular plate of brass, spaces are cut in the form of *radii*, equal in dimensions to the quantity left. Under the metallic star thus formed, a similar one is stowed, connected with the upper one by a pivot on which it turns. On giving a slight turn to the under star, it moves from under the upper one by which it was covered before, fills up the interstices, and the aperture is competely and exactly closed.

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a horizontal valve, the weight of which will be sufficient to close it, and exclude the colder air on the outside. When lifted up by the stream of heated air from within, the efflux of that air will be sufficient to prevent the influx of the colder air from without.

Why, instead of a single hole in the brick-work, a tube, and that running to such a height?—For two reasons: that it may not afford a means of secret converse between the cells; and that the air which has been breathed in the cell below may not be conveyed to any part, in which it would be liable to be breathed again, of the cell above: it is accordingly discharged as high as possible above the level of the organs of respiration.

Should the precaution be deemed necessary, a few slight bars might be disposed in such a manner as to prevent a prisoner from introducing his head or ear near enough to the mouth of the tube to gain an opportunity of converse. But frugality forbids the being at the expense of these bars, before experience has shown the need of them. The probability is, that no such need would ever occur; since a man could not make use of the aperture of the tube for speaking, without mounting upon something, nor mount upon any thing for that purpose without subjecting himself to a great chance of being observed. Nor then would it avail him anything, unless the person to whom he addressed himself in the cell above or underneath were elevated and occupied in the same manner at the same time, which, without doubling the chance of detection, could not be. Add to which, that if there be more than one in either cell, they too must be privy to the intercourse; and in a situation like this, privity without disclosure may in justice, and ought in policy, to be put, in respect of punishment, upon a footing with complicity.

The level at which the warmed air was discharged could not be too low: the only spot in which there can be a certainty of placing it without inconvenience is the floor of the intermediate area and the space under the lodge. Thus situated, the tube would not be above seven or eight feet below the level of the floor of the lowermost story of the cells which are to be warmed by it. If it were in the ceiling, it would be already three or four feet above them, and before it could cross the intermediate well, would have been carried still higher. If it were anywhere between the floor and ceiling, it would be in the way, and stop the passage, unless it were considerably higher than a man's head, and then it would require pillars here and there to support it. To sink it to that level, either the stoves themselves might be sunk down accordingly, or a *perpendicular* tube might drop from the warming-chamber to join the *radial* tube. The former expedient seems the most economical and the most simple.*

It might perhaps be no bad economy to have a sort of *curtain* for the annular sky-light, to cover it as soon as the lights are lit in cold weather. When not used, it might be kept coiled up on rollers, at the upper part of the sky-light, that is, at the part where it joins the roof of the inspection-tower, and from thence drawn down over and across the annular well, and fastened by rings to ranges of hooks inserted a little above the interior windows of the chambers over the cells. It might be of the thickness and texture of the warmest sort of blanketing. It would be assistant to warmth, not only by keeping the air from impinging against the glass of the sky-light, and there discharging its heat, but likewise by stopping the current, and directing it towards the cells. The sky-light, it should be observed, must unavoidably be secured by innumerable crevices, one between every two panes: for in that situation, in order to prevent their cracking by the vicissitudes of temperature, the panes, instead of being fixed in the frame, and the crevices stopped with putty, must be placed so as to lap over one another, without any thing to close the chinks.

Provision remains yet to be made for the lodge. This might be effected by a small tube running from each of the stoves. It need be but a small one; for the warmth yielded by the supports themselves through which the smoke is passing, cannot but be considerable. Not improbably it would be sufficient. If upon trial it should prove otherwise, it would be easy to add the tubes. To distribute the heat the better, and assist the ventilation, they should open at the circumference of the room, but just above the floor, alternating with the chimneys. The air, as fast as it was heated by the chimneys or by respiration, would, together with the heated air from the tubes, make its way out at the central aperture. There would be no danger either of phlogistication from the iron, or want of ventilation. The utmost heat which the smoke could impart to the chimneys would not be considerable enough to produce the former inconvenience, and the central aperture is a sufficient security against the latter.

Were it not for the distance there is between the spot where the air receives its heat,

* True it is, that though the air when heated will not naturally descend, yet sudden gusts may carry it even in that direction, besides that the heat of every stratum of air will of itself in a certain degree be communicated to every stratum of air that is contiguous. But these are assistances too inconsiderable to be adequate to the purpose. They would still leave a great disparity between the temperature of the lowest story and those above it.

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and the apartments for which it is wanted, it is evident the *discharging-ducts* could not be too short; since the more extensive they are, the more of the heat they absorb.

As to the inspection-galleries — being immediately over the spot at which the discharge of the heated air is effected, they can be at no loss for a supply: it is but leaving here and there in the floor an aperture capable of being closed at pleasure. Indeed, it matters not how thin the floors of those galleries are: if of mere boards, the mere crevices might answer the purpose.

From whence shall the air be admitted into the warming-chambers of the stoves? From the entrance, by an admission-duct—a sort of an *aeriduct*, if the term may be allowed, appropriated to the purpose. In general, this is a point very little attended to. Air of some sort or other will be found everywhere, and any sort, it is thought, may serve. Air already within the building might even be taken in preference; since by the stay it has made there it has already acquired some heat. But if the dependence is on what draws in through doors and crevices, there can be no air any further than in proportion as there is an influx of cold air at all those inlets. The cold air that comes in at the crevices will in most instances find its way to the bodies of those whom it is intended to keep warm: that which comes in at the doors will in every instance. But if a supply, adequate to the evacuation kept up by respiration and other causes, is introduced through the warming-chambers, no such influx of cold air will take place.

This aeriduct, then, will be nothing but a flue similar to those employed for conveyance of the smoke in hot-houses. Short tubes of iron will serve for its junction with the warming-chambers. The quantity thus drawn in can scarcely be sufficient for respiration;* if it were, the deficiency might be made up by tubes discharging the cold air at a height above the heads of the inhabitants, and pointing upwards.†

The Penitentiary-act puts an inexorable negative upon all this contrivance. Accord-

* The quantity thus requisite is easily ascertained. The quantity of fresh air necessary to support a man without inconvenience for a given time, has been pretty well determined. This quantity, multiplied by the greatest number of inhabitants the building can ever inclose at the same time, would give the quantity of fresh air requisite for the supply of the building during that time.

† Another use, which, though collateral to the above design, is not the least considerable of the advantages that might be reaped from it, is the opportunity it would afford of a set of experiments relative to the economy of heat. With the least quantity and expense of fuel possible, how to produce and support for a given time a given degree of heat, applicable to the several purposes for which heat is required? Such is the problem to be solved: a subject which has never yet been taken up upon principles, or upon a large scale. Of what importance the solution of such a problem would be to the population and wealth of nations, may be seen at a single glance. Fuel of the fossil kind is a limited resource; the nation which consumes it lives upon a capital which must sooner or later be exhausted. The population of a country in which artificial heat is a necessary of life must therefore ultimately depend upon the quantity it can keep up of such sort of fuel as can be obtained from the vegetable kingdom, the only sort which is capable of being regularly reproduced.

The facilities which a building upon the panopticon principle would afford for experiments in this view, will readily be apprehended. In the seven stoves, without putting more than one to each chimney it admits of, trial might be made of so many different forms. The *ventilative* mode would of course be taken for the common basis: but this ground-work is susceptible of a great variety of modifications. The construction pursued by Messrs. Moser and Jackson, with all its superiority over all preceding methods, may yet be found to fall considerably short of perfection in this line. Doubling the warming-chamber occasions a great consumption of fuel, and renders this mode of warming far from being so cheap as could be wished. Could not the same degree of extra heat be given to a building by a less degree of ignition given to a larger quantity of air? For, as Dr. Fordyce has clearly demonstrated to me, the less the degree of heat which the air contracts in the warming-chamber, the better, for very material reasons. Reducing the degree of heat given to the air by augmenting the quantity of air to which heat is given, could not there be found some single substance of which a warming-chamber might be made, without the addition of another receptacle to line or to inclose it? Is it most advantageous to make the warming-chamber *divided* into partitions, as practised by Moser and Jackson, or *entire*? and if entire, to what extent can such a warming-chamber be carried to advantage? What is the most advantageous form for the warming-chamber, and what the most advantageous mode of applying the fire to it, and connecting it with the fire-place? The relation being ascertained between a degree of heat as indicated by the thermometer on the one hand, and the expansive force on the other, and thence the velocity of current, and quantity of air so heated, discharged out of a mouth of known dimensions within a known time, could not a given degree of heat be secured at pleasure to the air thus discharged, by closing the mouth with a valve loaded by a weight, which would thus indicate and express by pounds and ounces the several degrees and quantities above mentioned, and consequently the calefactive powers of the stove? Such are among the questions which the inquiry would have in view. Hitherto, partly for want of science, partly for want of a proper theatre for experiment, whatever has been done by artists in this line has been little more than random guess-work. Means might not improbably be found, in some such way as above hinted at, of ascertaining *a priori*, I mean previously to any trial made in the particular building to be warmed, the calefactive power of a given stove, that is, the quantity of air heated to a given

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ing to that act, all penitentiary-houses must absolutely be warmed, "dried and moderately warmed in damp or cold weather," "by flues," and these flues must come "from the flues in the kitchens, and other public fires belonging to each house."*

The invention of Messrs. Moser and Jackson, as well as all other inventions, past, present, and to come, that make no use of flues, is here rejected, seven years before it was ever thought of. I must be allowed a word or two in behalf of these ingenious artists: I am a co-defendant with them — a partner in their guilt. The same statute which prohibits their mode of warming a penitentiary-house, proscribes my mode of building one, and my mode of managing one, in almost every circumstance. What has the service been a gainer by this rigour? We shall see. Economy, I presume, and that alone, was the power that dictated it. Humanity, however peremptory she might be in her injunctions that felons should have warm bed-chambers, would not of herself have been thus particular about the mode.

On the kitchen fires, which are put foremost, seems to be the grand reliance: the other public fires seem rather to be thrown in as make-weights.

That economy could draw much advantage from this source will not, I believe, seem very probable to any one who may have cast an eye over one of the preceding pages. A Panopticon Penitentiary-house is a *room*: this statute Penitentiary-house was to have been a *town*, with streets in it. In the room, this resource seemed to amount to little: what would it amount to in the town? I would as soon think of warming London by the fires of the tavern kitchens.

Thus, then, stands the economy of the contrivance. That the bed-chambers may be economically warmed by flues from kitchens, kitchens and kitchen fires, and so forth, are to be multiplied till there are enough of them for the bed-chambers. Could the new-invented stoves be employed on any terms under this act? By prescribing the one mode, does it peremptorily proscribe the other? Would an indictment lie, or only a *mandamus?* — This is more than I would presume to answer. But what must be done at all events, or the positive injunctions of the law disobeyed, is — to build the kitchens. That done, and whatever degree of heat is necessary being produced in that way, whatever degree is not necessary, might perhaps be produceable in the most economical manner by the new-invented stoves.

A little lower we shall see more of these culinary laws: but the virtue of the present one is not yet exhausted. To decide this, as well as all other questions relative to the construction of the building, three superintendents are employed. Suppose the three (no very unnatural supposition) to have taken up each of them a different system about warming: one a patron of the ingenious artists above mentioned; another a disciple and partisan of Dr. Franklin's; the third an adorer of the memory of the departed sage to whom this statute is so much indebted, and an inexpugnable defender of the letter of the law: so many superintendents, so many irreconcilable modes of warming the house. How would they agree? — As the three original superintendents did about the place where it was to be put.

The error lies, not in regulating badly, but in regulating at all. Economy, household economy, is the child of the hour: it changes with prices, which change with the progress of ingenuity, the course of taxation, the copiousness of supply, the fluctuations of demand, and a thousand incidents besides. Meddling with matters like these the legislator will probably be wrong to-day; he will certainly be wrong to-morrow.

Were I obliged to make a law about heat, I would rather enact the degree, than the mode of producing it. *In no cell shall the heat be suffered to be fewer than such a number of degrees, nor more than such another number, above the freezing point in such or*

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degree, which it is capable of yielding to that or any building within a given time. This indication being obtained, the several calefactive powers of different stoves might be compared while they were at work at the same time, whereas without it the comparison could no otherwise be made than by setting them to work in the same building at different times. The species and quantity of fuel employed in the different stoves, the temperature of the air in different parts of the building, and of the atmosphere without the building during the whole continuance of the experiments, —these or other influencing or resulting circumstances would need to be carefully marked and registered. In the same way, the comparative calefactive powers of different sorts of *fuel* might also be ascertained. I have already hinted at the inquiries that might be made relative to the application of the heat to baking, boiling, and other domestic operations—not to mention those which, like malting, brewing, and distilling, are conducted upon a more extensive scale. Were a course of experiments to be carried on with any such views, on so new and so peculiarly favourable a theatre, it might be of use that the plan of operations should be made public beforehand, that such lights and instructions as might be obtainable from the philosophical world might be collected before the commencement of the course. Philosophy is never more worthily occupied, than when affording her assistances to the economy of common life: benefits of which mankind in general are partakers, being thus superadded to whatever gratification is to be reaped from researches purely speculative. It is a vain and false philosophy which conceives its dignity to be debased by use.

* 19 Geo. III. c. 74, § 33.

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such a scale. Insure this degree, you whose business it is, as cheaply as you can. Is the temperature thus fixed upon a proper one? It will not be less so a thousand years hence. Minuteness might be objected, but not improvidence.

To what end this economy all the while? — That felons may have fires, or what is equivalent, in their bed-chambers. I say in their bed-chambers. For in these cells they are to do nothing but "rest:"* this is carefully provided: other apartments are to be given them for working-rooms and dining-rooms.† Fires in bed-chambers for felons? Is it every gentleman whose bed-chamber has a fire in it, or so much as a place to make one? In the coldest and dampest weather, is it altogether universal, even in the most opulent families, to have a fire to go to bed by?

"And have not your felons, then, this luxury?" Yes; that they have—and glad I am they have it. Why?—because it costs nothing: they have no other rooms than their bed-chambers. Is it that they may have warm rooms to sleep in? No; but that such of them as are employed in sedentary trades, may work and sit comfortably in the short intervals of their work, instead of shivering in forced and comfortless inaction. By night as well as by day, they work as long as health and ease permit. They are not, like some we shall see hereafter, compelled to laziness beyond that of the laziest child of luxury—chained to their beds by law.

SECTION XXIV.

OF THE ECONOMY OBSERVED IN THE CONSTRUCTION.

It may be reduced to three principal heads: 1. Making the same apartment serve for every thing; 2. Making the cells capable of serving for two, three, or four inhabitants, instead of one; 3. Making them no larger than is necessary.

1. Six several modes of action or existence are incident to the persons for whose reception the building is particularly designed: *to work, to eat, to sleep, to pray, to be punished,* and *to be nursed.* One and the same place serves my prisoners for all of them. If the restriction is severe, it is not unexampled. In our own three kingdoms, it is the lot of many hundred thousands, perhaps of some millions, of better men.

I see nothing that should hinder a man from working where he eats, working where he sleeps, eating where he works, eating where he sleeps, sleeping where he works, or sleeping where he eats. All this, and more, it has more than once happened to myself to do in the same room for a considerable time together, and I cannot say I ever found any bad consequence from it.

I conceive it not altogether impossible for a man, nor even for a Christian, to pray where he does all this: Christ and his apostles did so. Synagogues excepted, neither Christ nor his apostles knew what it was to pray in any consecrated place.

Not that for all this I have any objection to that rite. It seems neither difficult to show that it does service to religion, nor easy, if possible, to show that it does disservice.

In my plan, I accordingly admit a consecrated space, and that by no means a confined one—a place in which no operation that does not minister to religion shall be carried on. All I contend for is, that it is not necessary that the prisoners should themselves be situated in that place—that it is sufficient to every purpose, if, without being situated there, they see and hear what passes there. The place where the minister is situated, and where the more considerable part of the auditory are situated, the place to which the eyes and the thoughts of the prisoners are turned, is holy ground.

As little reason do I see why the same place should not serve them for being punished in. Separate apartments for this purpose are surely, of all luxuries, one that can best be spared.‡

As to nursing, whether, upon the common plans of construction, separate rooms for that use were necessary, is not strictly to the purpose here. The bed-chambers being all single ones, I do not immediately apprehend what advantage the patients were to get by being removed out of those rooms into others, unless it were that of having fires in their rooms—a benefit which, without shifting their quarters, they might have received from portable stoves. A portable stove not only costs less than a room, but is sooner made. Were the infirmary-rooms at any time to be filled, it would be rather an awkward circumstance

* Section 33. † Ibid.

‡ At Westminster school, two brothers once upon a time were caught straggling out of bounds. For their chastisement, their father, a character not unknown in those days, caused two ferulas to be made on purpose. The scene of each culprit's transgression was inscribed upon the instrument of his punishment; and care was taken, that in the correction of him who had strayed to St. John's, the ferula should not be employed which was destined to wipe out the guilt that had been contracted in Tothill-Fields. I remember the boys, the father, and the sticks. The mode of chastisement was, it must be confessed, striking enough: but was it a necessary one? As necessary, at least, as it would have been to have built rooms to punish them in. And of the two contrivances, building a room, and engraving a couple of words upon the head of a stick—which is the most expensive?

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for a patient in a high fever to wait for attendance, till an additional infirmary could be built and in readiness to receive him. At Moser and Jackson's, a good portable stove may be had upon the purest principle for 3½ guineas, ready made; stoves of inferior quality, and less elaborate contrivance, probably at a still cheaper rate.

But be this as it may in the Penitentiary-town designed by the act, in a Panopticon Penitentiary-house nursing-rooms on purpose would be unnecessary beyond dispute. Rooms better adapted to that use than every cell is of itself, or even so well, can hardly be shown anywhere. By nursing-rooms on purpose, I mean rooms which, when they are not put to this use, are not put to any other. For as to particular cells, more particularly well suited to the purpose of an *infirmary* than other cells, such have already been pointed out, and under that very name;* but the convenience they would afford to the sick is no reason why, when there are no sick, they should remain unoccupied. Indeed the whole of the upper story of cells is peculiarly well adapted to this use. None of the air that has visited any one of these cells, ever visits any other part of the whole building; and being so much nearer than any others to the roof, they can receive a portable stove and its chimney, with so much the less inconvenience and expense.†

All these different sets of apartments the Penitentiary act supposes—all but one, the dining-rooms, it expressly orders.‡ I see no mention in it of powdering-rooms.‖

On the common penitentiary plans, each prisoner must at any rate have a sleeping-room to himself. Why? Because, being under no sort of inspection or controul during the hours allotted for sleep, which under the common management occupy the greatest part of the twenty-four, even two, much more any greater number, might prompt and assist one another in plotting to escape. But the rooms they sleep in might at some times be too cold for working in, or they would not hold the machines which it is thought advisable to employ—or their work requires that they should be under the eye of an inspector, which they cannot be in these rooms: therefore there are to be other rooms for working in.

Have any notions about health and airiness contributed to this opinion about the necessity of different rooms for the different parts of the twenty-four hours? I am not certain, though something to this effect I think I have observed in the publications of Mr. Howard. But even under the common Penitentiary discipline, I should not think any such multiplication necessary, much less under the plan of management here proposed. To how many hundred thousands of his Majesty's honest subjects is such luxury unknown! Even among persons somewhat above the level of the lowest class, what is more common than to have but one room, not only for one person, but for a whole family—man, wife, and children? and not only working, and sleeping,

* Section 6, *Dead-part*.

† A separate infirmary for a Panopticon Penitentiary-house? I would not desire such a thing even for the plague. Guarded by proper regulations, I should not have the smallest apprehension of inhabiting the inspection-tower, while the cells were filled by patients dying of that disease. How much less would there be to fear, where the only danger is a possibility of its importation by goods or passengers on account of the country from which they come! A LAZARETTO may accordingly be added to the number of the establishments to which the panopticon principle might be applied, under some variations, to signal advantage. On casting an eye over the *Table of ends and means* at the end of this volume, the reader will easy distinguish such of the latter as are applicable to this purpose: he will also distinguish with equal facility such of the expedients as, being adapted to opposite purposes would require to be discarded or changed. As to comfort, amusement, luxury in all its shapes, it is sufficient to hint that there is nothing of that sort that need be excluded from such an hotel, any more than from any other. But everything of luxury apart, what would not Howard have given for a cell in a Panopticon Penitentiary house as here described, instead of the apartment in the Venetian Lazaret, the stench of which had so nearly cost him his life?[a]

I must not dwell in this place on a subject of so confined a nature, and so foreign to the present purpose. I will only just add, that the plan of warming, as here described, would afford a method peculiarly advantageous of airing the cotton wool, which is the great and dangerous article in the Levant trade. Laying the cotton in light strata upon numerous and shallow stages, in sheltered warehouses, occupying the ground-floor of the cellular part of the building, it might easily be so ordered, by flues or pipes leading from the back part of those stages to the stoves in the inspection-tower, that not a particle of air should visit the fire in the stoves, that had not made its way through the cotton on the stages. The ventilation, besides being so much more perfect, not depending, as it must otherwise, upon the uncertainties of the weather, the continuance of this irksome and expensive probation might be so much the shorter.

[a] Howard on Lazarettos, p. 11.

‡ Not exactly so. Meals, for aught I see, might be made in the working-rooms: they cannot, however, in the sleeping-rooms. — § 33. I am not certain whether Mr. Blackburne put dining-rooms in his plans: I think I have heard he did. Two chapels I know he had put in for the National Penitentiary-house—one for each sex—but struck out one of them upon its being suggested to him that it was possible for the two sexes to be in the same place at different times.

‖ I was once much pressed to put a tennis-court in my plan; for felons have not less need of exercise than honest men. Powdering-rooms are more common, and would be less expensive.

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and eating, but cooking to be performed in it? Among the Irish cottars, as we learn from Mr. Arthur Young, that is, among the bulk of the Irish people, one room is the only receptacle for man, wife, children, dog, and swine. Has that one room so much as a single window in it, much less opposite windows, or any aperture but the door? In towns where one room forms the sole dwelling-place of a whole family, has not that room closed windows in it? Is there any commanding power to enforce the opening of any of those windows? does not the aversion to cold forbid it? Are they so much as capable of being opened, if at all, for more than half their length, and that the lower half?*

Let me not be mistaken. Far be it from me to propose the manner in which the common people live through ignorance, as a proper model to be pursued by those who have the good fortune to be possessed of more intelligence;—far be it from me to insinuate that a bad regimen ought to be prescribed, only because it is practised;—all I mean is, that the degree of airiness most frequent in the dwellings of the greater part of the people is inferior, and much inferior, to that which might be obtained without multiplication of rooms, even according to the hitherto received mode of construction for penitentiary-houses, and according to the mode of management hitherto pursued in them. In prisons even so managed, the inhabitants would not, in this respect, be worse off, but much better off, than the common run of men at liberty. Yet even in this respect, how inferior are some of the most approved plans of construction, in comparison of the one now proposed!† There, when you shut out rain or snow, you shut out air: here, rain or not rain, windows open or not open, you have fresh air in plenty—in much greater plenty than is usual in a palace.

2. Of such part of the saving as results from the substituting a steady plan of mitigated seclusion in small apartments, to an alternation of solitude and promiscuous intercourse, nothing farther need be said here: it has been fully vindicated in a preceding section.

3. Of the waste of room observable in the common plans, a great part is to be placed to the account of *height*. Not more than eleven feet, but not less than nine, is the height prescribed by the Penitentiary act.‡ The Wymondham-house takes the medium between these two extremes.‖ Waste it may well be called. I suspected as much at the time of writing the letters: I speak now with decision, and upon the clearest views. In respect of health, height of ceiling is no otherwise of use, than as a sort of succedaneum to, or means of, ventilation. In either view, it is beside the purpose: as a succedaneum, inadequate; as a means, unnecessary. If your air, indeed, is never to be changed, the more you have of it, the longer you may breathe it before you are poisoned: this is all you get by height of ceiling. But so long as it is undergoing an incessant change, what signifies what height you have? Take a Panopticon penitentiary-house on one hand, and St. Paul's employed as a penitentiary-cell, on the other: let the Panopticon, aired as here proposed to be aired, and warmed as here proposed to be warmed, contain 4 or 500 prisoners; let St. Paul's, hermetically closed, have but a single man in it; the Panopticon would continue a healthy building as long as it was a building; in St. Paul's, the man would die at the end of a known time, as sure as he was put there.§

In this one article we may see almost a half added to the expense in waste. Ten feet from floor to ceiling, when less than seven feet would serve!—when less than seven feet does serve, and serves to admiration! I am almost ashamed of the eight feet I ask: it is for the mere look's sake that I ask it. The experiment has been tried: the result is known, though not so well known as it ought to be. Have the *hulks* ten feet of height?—have they eight feet?—have they seven? I look at Mr. Campbell's *hulks*, and to my utter astonishment I see that nobody dies there. In these receptacles of crowded wretchedness, deaths should naturally be more copious than elsewhere. Instead of that, they are beyond

* Were ventilation the object, the upper sash would be the one to open in preference, especially where the highest part of the lower one is not above the level of the organs of respiration. Were it not for accidental gusts, so much of the air as is above the aperture might remain for ever unchanged. It may perhaps have been partly on this consideration, that in Mr. Howard's and the Wymondham plans, the holes serving for windows are placed so high.

† Supra, p. 96.

‡ Sect. 33. ‖ Supra, p. 96.

§ In the Letter on Hospitals, the reader may recollect what is said in commendation of an idea of Dr. Marat's with respect to ventilation, and the form of construction proposed by him in consequence. What he says is very just, as far as it goes: but the truth is, that so long as proper air-holes are made, and proper means employed for determining the air to pass through them, there is no form but may be made as ventilative, and by that means as healthy as his. At that time I had never experienced the heartfelt satisfaction I have since enjoyed, of visiting a London hospital. I had not then seen either St. Thomas's or Guy's. I had no idea of the simple yet multiplied contrivances for ensuring an unremitted yet imperceptible change of air, nor the exquisite purity and salubrity that is the result of them. If I had, I should little have thought of sending Englishmen to France, or any other country, for hospital practice or theories of ventilation.

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comparison less so. I speak from the reports. I know not the exact proportion; my searches and computations are not yet complete; but as to so much I am certain. I speak of the ordinary rate. Now and then, indeed, there comes a sad mortality — Why? — because where pestilence has been imported, hulks neither do nor can afford the means of stopping it. But, bating pestilences, men are immortal there. Among 200, 300, quarter after quarter, I look for deaths, and I find none—Why? — because Mr. Campbell is intelligent and careful, Pandora's cordials unknown there, and high ceilings of no use.

This experiment is new matter: it is no fault of the legislators, of whom I speak, not to have made use of it. In their time it did not exist: how should it? It was this very statute of theirs that produced it. While they were building their penitentiary-castle with one hand, they little thought how with the other they were cutting the ground from under it. The information does exist now: the fault will be not theirs, but that of their successors, if, like the Wandsworth purchase, the knowledge thus acquired lies in waste.

Mention not the mortalities: it is impossible they can have had the low ceilings for their cause. The mortalities have been rare: for these three or four years none; from that period immortality begins. Have the ceilings been higher since that time? Had Captain Cook ten feet, eight feet, seven feet between decks? — Captain Cook, under whom, in a voyage that embraced all the climates of the globe, out of 80 men not a single one died in a space of between four and five years?* Out of 112, in the same time, but five, nor of those more than two in whom the seeds of death had not been sown before their embarkation?

What was your National Penitentiary-house to have cost? £120,000. — *How many was it to have holden?* 960. — *What did your Liverpool Jail cost? About* £28,000. — *How many will that hold?* 270. — *What! make the nation pay* £120 *for what you have done for* £100? *How comes that about?—How? Why, from the Act: the Act will have high ceilings — how could I lower them? — the Act will have spacious rooms — how could I narrow them? The King was to pay for every thing: every thing was accordingly to be upon a royal scale. At Liverpool it was otherwise: those who ordered were to pay.*—Such was the purport of a conversation I had with Mr. Blackburne.

* Four years, two months, and 22 days. See Cook's Second Voyage, Introduction.

POSTSCRIPT—PART II.

PRINCIPLES AND PLAN OF MANAGEMENT.

SECTION I.

LEADING POSITIONS.

THIS surely is no place for anything like a complete and regular system of prison-management. Such an enterprise would have been above my strength. It would have required opportunities which I have not possessed, and time more than at present can be spared.

A work of this kind is, however, still to execute. Mr. Howard's publications present no such work. They afford a rich fund of materials; but a quarry is not a house. No leading principles — no order — no connexion. Rules, or hints for rules, in places which, unless by reading the book through again, you can never find a second time; recommendations, of which the reason is not very apparent, and for which no reason is given; some perhaps for which no sufficient reason, if any, could be given. My venerable friend was much better employed than in arranging words and sentences. Instead of doing what so many could do if they would, what he did for the service of mankind, was what scarce any man could have done, and no man would do but himself. In the scale of moral desert, the labours of the legislator and the writer are as far below his, as earth is below heaven. His was the truly christian choice; the lot, in which is to be found the least of that which selfish nature covets, and the most of what it shrinks from. His kingdom was of a better world; he died a martyr, after living an apostle.

To please everybody, is acknowledged to be in no instance a very easy task. There are perhaps few instances in which it is less so than this of penitentiary discipline. There are few subjects on which opinion is more under the sway of powers that are out of the reach of reason. Different tempers prescribe different measures of severity and indulgence. Some forget that a convict in prison is a sensitive being; others, that he is put there for punishment. Some grudge him every gleam of comfort or alleviation of misery of which his situation is susceptible: to others, every little privation, every little unpleasant feeling, every unaccustomed circumstance, every necessary point of coercive

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discipline, presents matter for a charge of inhumanity.

In the midst of these discordant sentiments, this promiscuous conflict, in which judgment and regulation are so apt to be led astray, sometimes by the negligence of insensibility, sometimes by the cruel anxiety of cowardice, sometimes by the excess of tenderness, and now and then perhaps by the affectation of it, a few leading positions, if by good fortune any such should be to be found, to which men of no description whatever, be their degree of judgment or cast of temper what it may, shall find it easy to refuse their assent, will not be without their use: unfortunately, the application of those principles will still leave but too wide a field for uncertainty and variance. But even in case of variance it will be something to have placed the question upon clear ground, and to have rendered it manifest to every eye on what point it turns, whether the disagreement is an irremediable one, or whether any means of putting an end to it may be hoped for from farther investigation.

But, in the first place, a summary view of the objects or ends proper to be kept in view in the planning of such a system may not be without its use. They may be thus distinguished and arranged:—

1. *Example*, or the preventing others by the terror of the example from the commission of similar offences. This is the main end of all punishment, and consequently of the particular mode here in question.

2. Good behaviour of the prisoners during their subjection to this punishment; in other words, *prevention of prison offences* on the part of prisoners.

3. *Preservation of decency*, or prevention of such practices in particular as would be offences against decency.

4. Prevention of undue hardships; whether the result of design or negligence.

5. *Preservation of health*, and the degree of *cleanliness* necessary to that end.

6. *Security against fire.*

7. *Safe custody*, or the prevention of escapes, which, as far as they obtain, frustrate the attainment of all the preceding ends.

8. *Provision for future subsistence*; i. e. for the subsistence of the prisoners after the term of their punishment is expired.

9. *Provision for their future good behaviour*, or prevention of future offences, on the part of those for whose former offences this punishment is contrived. This is one of the objects that come under the head of *reformation.*

10. *Provision for religious instruction*;—a second article belonging to the head of *reformation.*

11. *Provision for intellectual instruction and improvement* in general;—a third article belonging to the head of *reformation.*

12. *Provision for comfort*; i. e. for the allowance of such present comforts as are not incompatible with the attainment of the above ends.

13. *Observance of economy*; or provision for reducing to its lowest terms the expense hazarded for the attainment of the above ends.

14. *Maintenance of subordination*; i. e. on the part of the under officers and servants, as towards the manager in chief—a point on the accomplishment of which depends the attainment of the several preceding ends. No one of these objects but was kept in view throughout the contrivance of the building; none of them that ought to be lost sight of in the contrivance of the plan of management. The management was indeed the end: the construction of the building but one amongst a variety of means, though that the principal one.

I may perhaps subjoin in the way of recapitulation, a general *table of ends and means*—a tabular view of the several expedients employed or suggested for the attainment of the above ends.

In the meantime, this summary enumeration of the ends themselves may serve to direct our attention, and afford us some guidance in judging of the proposed expedients as they present themselves; and incidentally of the regulations and expedients that have been established or recommended by others, either with a view to the same ends, or at least with relation to the same subject.

From the different courses taken in the pursuit of these several ends, or some of them, errors have been adopted, by which the lot of the persons devoted to this punishment has been affected in opposite ways: the treatment leaning, in some instances, too far on the side of severity; in others, too far on the side of lenity and indulgence. It is for the correction and prevention of such errors, that the three following rules are proposed, to serve as guides in the pursuit of the above enumerated ends. These are the leading positions above alluded to. Should their propriety be admitted, there is not a single corner of the management in which their utility will not be recognised.

1. *Rule of Lenity.*—The ordinary condition of a convict doomed to forced labour for a length of time, ought not to be attended with bodily sufferance, or prejudicial, or dangerous to health or life.*

2. *Rule of Severity.*—Saving the regard due to life, health, and bodily ease, the ordinary condition of a convict doomed to a punishment which few or none but indivi-

* The qualification applied by the epithet *ordinary*, and the words *length of time*, seemed necessary to make room for an exception in favour of temporary punishment for prison offences, at the expense of bodily ease.

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duals of the poorest class are apt to incur, ought not to be made more eligible than that of the poorest class of subjects in a state of innocence and liberty.

3. *Rule of Economy.* — Saving the regard due to life, health, bodily ease, proper instruction, and future provision, economy ought, in every point of management, to be the prevalent consideration. No public expense ought to be incurred, or profit or saving rejected, for the sake either of punishment or of indulgence.

Propositions of such latitude may be thought to require a few words of explanation: — propositions of such importance may require something to be said in the way of justification. The precaution is not superfluous. The reader who feels himself interested in the subject would do well to scrutinize them. It is but fair he should have this warning; for if these are really fit to compose a test, no plan of management has yet been either pursued or proposed, that will abide it.

Injuries to health and bodily ease are apt to result principally from either that part of the management which concerns *maintenance*, or that which concerns *employment*. The supply for maintenance may be defective in quantity, or improper in quality: the labour exacted in the course of the employment may be improper in quality, or excessive in quantity.

What must not be forgotten is, that in a state of confinement, all hardships which the management does not preserve a man from, it inflicts on him.

The articles of supply necessary to preserve a man from death, ill health, or bodily sufferance, seem to be what are commonly meant by the *necessaries of life*. The supplies of this kind with which, according to the rule of lenity, every such prisoner ought to be furnished, and that in the quantity requisite to obviate those ill consequences, may be included under the following heads: —

1. Food, and that in as great a quantity as he desires.

2. Clothing at all times in sufficient quality and quantity to keep him from suffering by cold, with change sufficient for the purposes of cleanliness.

3. During the cold season, firing or warmed air sufficient to mitigate the severity of the weather.

4. In case of sickness, proper medicine, diet, and medical attendance.

5. In the way of precaution against sickness, the means of cleanliness in such nature and proportion as shall be sufficient to afford a complete security against all danger on that score.

The reasons against inflicting hardships affecting the health, and such privations as are attended with long-continued bodily sufferance, are —

1. That being unconspicuous, they contribute nothing to the main end of punishment, which is example.

2. That being protracted, or liable to be protracted, through the whole of a long and indefinite period, filling the whole measure of it with unremitted misery, they are inordinately severe; and that not only in comparison with the demand for punishment, but in comparison with other punishments which are looked upon as being, and are intended to be, of a superior degree.

3. That they are liable to affect and shorten life, amounting thereby to capital punishment in effect, though without the name.

Punishments operating in abridgment of life, through the medium of their prejudicial influence with regard to health, are improper, whether intended or not on the part of the legislator. In the latter case, the executive officer who subjects a man to such a fate without an express warrant from the judge, or the judge who does so without an express authority from the legislator, appoints death where the legislator has appointed no such punishment, and incurs the guilt of unjustifiable homicide, to say no worse of it.

If intended on the part of the legislature, they are liable to the following objections: —

1. They are severe to excess, and that to a degree beyond intention as well as proportion. Styled less than capital, they are in fact capital, and much more; the result of them being not simple and speedy death, as in the instances where death is appointed under that name, but death accompanied and preceded by lingering torture.

2. They are unequal; causing men to suffer, not in proportion to the enormity of their offences, either real or supposed, but in proportion to a circumstance entirely foreign to that consideration; viz. their greater or less capacity of enduring the hardships without being subjected to the fatal consequence.

Food is the grand article. It is the great hinge on which the economy of supply turns. It is the great rock on which frugality and humanity are apt to split. Food ought not to be limited in quantity, for this reason: — Draw the line where you will, if you draw it to any purpose, the punishment becomes unequal. Unequal punishment is either defective or excessive: it may be in both cases at once; but in one or the other it cannot but be. In the present instance, the sole result of the inequality is excess: so many as the allowance fails to satisfy, so many are subjected to an additional burthen of punishment foreign to the design. Draw the line where you will, you can never draw it right: useless or improper is the only alternative: it is only in proportion as humanity loses, that frugality can gain by it. Pinch many, and those hard, your line is proportionably un-

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equal and unjust: pinch few, and those but slightly, what you save is but little, and you serve Mammon for small wages. The inequality is all sheer injustice; it has no respect at all to conduct: the punishment proportions itself, not to the degree of a man's delinquency, but to the keenness of his appetite. It is not the injustice of a day, nor of a week, but of whole years; and the weight of it rather accumulates than diminishes by time. As the quantity of food desired by a man, living in other respects in the same manner, is pretty much the same, if the measure falls considerably short of any man's desires any one day, so will it every other: as his hunger would not cease even at the conclusion of his meal, much less will it during any part of the interval betwixt meal and meal: the consequence is, that the whole measure of his existence is filled up with a state of unremitted, not to say increasing sufferance.

I have distinguished this mode of producing sufferance from an injury to health, merely not to strain words: but the difference is but in words. If a man experience a constant gnawing of the stomach, what difference is it to him whether it comes from improper food, or from want of food? If a constant shivering, what matters it whether from an ague, or from want of fire?

By this violation of the law of lenity, true economy does not gain near so much as at first sight might appear. That a man who is ill fed will not work so well as a man who is well fed, is allowed by everybody. But the great cause that prevents economy from gaining by this penury is, that what is grasped with one hand is squandered with the other. Those who limit the quantity of food, neither confine the quality to the least palatable, which is in a double point of view the cheapest sort, nor avoid variety and change. Provocations are thus administered, while satisfaction is denied; and what is saved by pinching the stomach is thrown away in tickling the palate. Make it a rule to furnish nothing but of the very cheapest sort, and if there should be two sorts equally cheap, to confine the men to one, you need not fear their eating too much. Every man will be satisfied: no man will be feasted, no man will be starved.

This abundance will be no violation of the rule of severity. The lot of delinquents will not be raised above that of the innocent at large, except in as far as the latter is sunk below the ordinary level by accidental imprudence or misfortune. All men in a state of innocence and liberty do not in fact enjoy a full supply of necessaries. True: but there are none but what might, if they would dispense with luxuries. The deficiencies produced by accidental misfortune are supplied by public bounty; and, bating such accidents, the wages of labour, at the lowest rate known in the three kingdoms, are such as will leave nothing to desire on the head of real necessaries.* To the extent of their means, the poorest enjoy, at any rate, the liberty of choosing.

This economy wil. be no violation of the rule of lenity: though superfluous gratifications be so far denied, no bodily sufferance is produced. The privation is not carried beyond the bounds which the rule of severity prescribes. While so many honest men fail of being satisfied in quantity, why should criminals be indulged in quality?†.

Nor does the rule of severity exclude a certain measure even of super-necessary gratification. The rule of economy, as we shall see, not only admits but necessitates the calling in the principle of reward; and reward might lose its animating quality, if it were debarred from showing itself in a shape so inviting to vulgar eyes. Nor, when all the luxury that economy can stand in need of is thus admitted, need there be any apprehension lest the rule of severity should be violated by the admission, and the lot of labouring prisoners be rendered too desirable. The irksomeness of the situation strikes every eye: the alleviations to it steal in unobserved.

Punishments affecting health, or life, by imposing on men the obligation of exercising any employment injurious in that way, are productive of the collateral inconvenience of imposing hardship on innocent men, by holding up the occupation they follow in an igno-

* See this abundantly proved by Dr. A. Smith in the Wealth of Nations.

† The privation, there is reason to think, is much more apparent than real. At the utmost, it can amount to no more than the loss of such part of the gratification as depends on relish: that which depends upon appetite remains untouched, being inseparable from the satisfaction of the demands of nature. This latter part is perhaps the more considerable; nor is the loss incurred on the other score sustained without an indemnification. In the pursuit of that part of the gratification which depends on relish, a great part of that which depends on appetite is habitually given up. Eating oftener, or more than they need, men eat with so much the less appetite. The poor give up one part of the gratification, the rich another. Whether the poor sustain any habitual loss, even in point of relish, is, after all, not altogether clear. The loss of the enjoyment of occasional feasting, is perhaps the only real loss sustained. In this, too, the poor are but upon a par with the richest class of all. Food affords a feast to those only to whom it is rare; those who appear to feast always, never feast at all. Confinement to the least palatable kind of food, so far, then, from being too severe a punishment, would be no punishment at all, were it not for some antecedent experience of better fare. What punishment is it to the Hindoo to be forbidden roast-beef, and to be confined to rice? How many dishes are coveted by the rich, that would be spurned at by the poor!

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minious point of view, and disposing them to be discontented with their lot.

An occupation of this nature will hardly be imposed, but under the notion of causing to be done for the community, something or other which would not be done for it at all, or at least not so well or not so cheap, otherwise. But no occupation of that tendency can be assigned, which would not be, and, if the law permits, is not already, embraced by a sufficient number of free individuals, who being paid what, in their instance and according to their estimation, is an equivalent, carry it on by choice. Whether the work done by compulsion, is done, upon the whole, cheaper, for its goodness, than the work done voluntarily, is as it may be: but what is certain is, that those who submitted to it without regarding it as a hardship, find it converted to their prejudice into a hardship which it was not before.

As to the rule of economy, its absolute importance is great—its relative importance still greater. The very existence of the system—the chance, I should say, which the system has for existence, depends upon it. That in all other points of view this mode of employing criminals is preferable to any other, seems hardly to be disputed: but what men are afraid of is the expense. Let the rule of economy be steadily submitted to, and prudently turned to account, frugality will gain as much by the penitentiary system as every other end of punishment.

In such a situation, whatever expense is incurred, or saving foregone, for the mere purpose of adding to the severity of the punishment, is so much absolutely thrown away. For the ways in which any quantity of suffering may be inflicted, without any expense, are easy and innumerable. Instances of this waste have been already seen in a preceding section:* more will be found in a succeeding one.†

The measure of punishment prescribed by the rule of severity, and not forbidden by the rule of lenity, being ascertained, the rule of economy points out, as the best mode of administering it, the imposing some coercion which shall produce profit, or the subtracting some enjoyment which would require expense.

SECTION II.

MANAGEMENT—IN WHAT HANDS, AND ON WHAT TERMS.

ECONOMY, it has been already shown, should be the ruling object. But in economy, every thing depends upon the *hands* and upon the *terms*. In what hands, then? upon what terms? These are the two grand points to be adjusted, and that before any thing is said about regulations. Why? Because, as far as economy is concerned, upon those points depends, as we shall see, the demand for regulations. Adopt the contract-plan—regulations in this view are a nuisance: be there ever so few of them, there will be too many. Reject it—be there ever so many of them, they will be too few.

Contract-management, or *trust-management?* If trust-management, management by an *individual* or by a *board?* Under these divisions, every possible distinct species of management may be included. You can have nothing different from them, unless by mixing them. In an economical concern like this, contract-management, say I—Board-management, says the act: which says right? I. Who says so? The act itself. A principle is laid down; I adopt it: regulations are made; they violate it. What is the consequence? Error upon error, as well as inconsistency: error in preferring trust-management to contract-management; error in preferring board-management to trust-management in single hands: error in opposite shapes, both embraced at the same time. Trust-management appointed where nothing but contract-management was tolerable: contract-management preferred in the instance where, if in any, trust-management might have been harmless and of use.

By whom, then, shall we say, ought a business like this to be carried on?—by one who has an interest in the success of it, or by one who has none?—by one who has a greater interest in it, or by one who has an interest not so great?—by one who takes loss as well as profit, or by one who takes profit without loss?—by one who has no profit but in proportion as he manages well, or by one who, let him manage ever so well or ever so ill, shall have the same emolument secured to him? These seem to be the proper questions for our guides: where shall we find the answers? In the questions themselves, and in the act.

To join interest with duty, and that by the strongest cement that can be found, is the object to which they point. To join interest with duty, is the object avowed to be aimed at by the act. The emolument of the governor is to be proportioned in a certain way to the success of the management. Why? that it may be "*his interest*" to make a successful business of it, "*as well as his duty.*"‡ How, then, is it made his interest? Is he to take loss as well as profit? No; profit only. Is he to have the whole profit? No, nor that neither; but a part only, and that as small a part as gentlemen shall please. Well

* See Part I. Sect. 24. † Section *Employment*.

‡ 19 Geo. III. ch. 74. § 18.

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—but he is to receive none, however, if he makes none? Oh yes; as much profit, and that as secure an one as gentlemen may think fit to make it. He may have ever so large a share of any profit he makes, or ever so small a share; and whether he makes any or none, he may have a salary, all the same. Let him get as much as he will, or get as little as he will, or lose as much as he will, or waste as much as he will, he is to have a salary for it, and in all these cases the same salary, if they please. All this in the same section and the same sentence which lays down the junction of interest with duty as a fundamental principle.

And whom does the management depend upon, after all? Upon this governor?—upon the man in whose breast this important junction is to be formed? Oh no: upon a quite different set of people: upon a committee. And who are this committee? A set of trustees, three in number, who would be turned out with infamy, if they were found to have the smallest particle of what is here meant by *interest* in the whole concern. *They* are the persons to manage, they are the persons to contrive, they are the persons to work: the governor, with his magnificent title, is to be their tool to work with. Upon them everything is to depend; upon his excellency nothing: he is their journeyman; they are to put him in, they are to turn him out, and turn him out when they please. Three "gentlemen, or other creditable and substantial persons,"* who are to come now and then, once in a *fortnight* or so,† as it suits them—sometimes one, sometimes another, when they have nothing else to do—these are the people who are to govern: the person who is to be nailed to the business, and to think of nothing else, the person upon whose shoulders the whole charge of it is to lie—the governor *a non gubernando, ut lucus a non lucendo*, is to be a puppet in their hands. As to *their* doing their duty, how that is to be brought about, seems not to have been much thought of. He, however, is to do his: that he may be sure to do it, it is to be made his interest; that it may be his interest, he is to have a motive given him for doing it, and that motive is to be a "*profit*" he is to have "*upon the work*." This profit—what is it, then, to depend upon? Upon his exertions? No: it is to be fixed by the committee; and whether, when fixed, it shall amount to anything, is to depend upon *their* management, upon their wisdom, their diligence, and their good pleasure.

Power and inclination beget action: unite them—the end is accomplished, the business done. To effect this union in each instance, is the great art and the great study of government. How stand they here? Instead of their being brought together, they are kept at arm's length. Power is lodged in one place, inclination in another: as to their ever coming together, if they do, they must find the way to one another as they can. The committee, with the inducements given to the governor, might have done tolerably: the governor, with the power given to the committee, better still. Which of these plans is pursued? Neither. The governor, thanks to the pains that have been thus taken with him, has all the inclination in the world to make good management of it; but as to the power, it is none of his. The committee have power in plenty: but as to inducements to give them inclination, they have none. At least, if they have any, it is not for anything the act has done to give it them: if they have any, it is to bountiful nature they are indebted for it, and to themselves. Taking such opposite courses, can the act be right in both? I don't see how. If it is not redundant in the one instance, it is deficient in the other. Sir Kenelm Digby invented a sympathetic powder: applied to one body, it was to cure wounds in another. The prescription here proceeds upon the same principle. Money is put into the hand of the servant, called a *governor;* and the reward thus applied is to operate upon the affections, and determine the conduct, of the masters—the committee. Under such a constitution, upon what does the chance it leaves for good economy depend? Upon the governor's writing orders for himself, and *their* signing them: upon their being pensioned by him, or acting as if they were.

When I spoke of their having the power, all I meant was, that what power is given, such as it is, is in their hands. But it is a power big with impotence. What is to be the number of this committee? Three, and three only. What if one of them should be ill, or indolent, or out of the way, or out of humour, and the two others should not agree? What is to be done then? Nothing. What then is to become of the establishment? It is to go to ruin. The prisoners are to sit with their hands before them and starve; for not a handful of hemp, no, nor a morsel of bread, can the governor buy or agree for, without the committee.‡ "Oh, but any two may act," says the statute, "without the other." Yes, that they may: and how is it to be done? The two who, by the supposition, cannot agree, are to agree which of them shall be chairman, in order that there may be one of them who shall have everything his own way.‖ For such is the constitution of this committee: an assembly of two, one of them with a casting voice.

* § 15. † § 45. ‡ § 21. ‖ § 15.

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If two heads, while they remain two heads, cannot govern the smallest household, what will they do in so large a one? If division begets confusion in a family of three, what must it do in a family of thrice three hundred?

The complication was not yet thick enough. Clouds are heaped upon clouds—all to give shade and perfection to economy. I shall not, however, spend many words upon the orders and regulations that were to be made, all for the benefit of this infant plant, by a legislature composed of three estates: the governing committee, the justices of the peace in quarter-sessions, and the judges of assize, or, if in Middlesex, of the King's Bench: of whom the judges of assize were to listen to plans of household and mercantile management with one ear, while they were trying causes with the other, in a country through which they were riding post.—"Oh no, no:—it's your mistake: it was not to meddle with economy that the judges were called in—it was to check cruelty, to prevent negligence, to restrain mischievous indulgence, to enforce good morals." I do *not* mistake. It was for economy, and for nothing else. Had the hulks committees to regulate for them, or justices of the peace to check the committees, or judges to check the justices? Were the hulks more exempt from danger of cruelty, or negligence, or partiality, or corrupt indulgence, or bad morals? No: but on board the hulks there was no economy to nurse; so that courts of quarter-sessions, and judges of assize, and courts of King's Bench, would there have been of no use.

"But are not there establishments of a similar nature, actually governed by multitudes?" Yes, plenty: but why? because the multitudes, though such in show, are, in effect, reduced to one. So far as the multiplicity has its effect, it does mischief, and mischief it continually is doing: so far as it has no effect, it does none. The colleagues jostle and jostle, till they find out which of them is the strongest; the business goes on, when, like the serpent rods, one of them has swallowed up the rest. Sometimes, if the power be large enough to cut into shares, the battle ends by compromise: what was given in coparcenary, is used in severalty; and as nature will sometimes repair the errors of the physician, compact furnishes a palliative for the weakness of the law.

From such a constitution, what could have been expected? What has happened. A committee is appointed, and the first and only thing they do is to quarrel. The act for building the house passed in 1779: we are now in 1791, and still there is no house. They quarrelled before the first stone was laid, and before it was agreed where it should be laid: they quarrelled about that very question. But there could not have been a stone laid but what would have been just as capable of raising a quarrel as the first—no, nor a barrel of flour been to be bought, nor a bundle of hemp, nor a petticoat, nor a pair of breeches. The constitution being such as it was, the happiness was, that it showed itself so soon. Better the project should stop as it did, as soon as the ground was bought, than after £120,000 had been spent in covering it, and perhaps as much more in stocking it. "Oh, but it was by accident that it stopped." No; it was not by accident—it was by the nature of things; you have seen it was: it would have been by accident if it had gone on.

And does not management of all kinds go on, and go on very well, in *partnership*? To be sure it does: why? because common interest either keeps men together, or separates them in time. Agreeing, they cast their parts and divide the business between them as they find convenient: disagreeing, they can part at any time. Necessity compels the separation: ruin is the penalty of refusal.—How is it with a set of uninterested board-managers like the committee? Going, they lose everything: staying, they lose nothing—whatever comes of the trust.

Economy has two grand enemies: *peculation* and *negligence*. Trust-management leaves the door open to both: contract-management shuts it against both. Negligence it renders peculiarly improbable: peculation, impossible.

To peculate is to obtain, to the prejudice of the trust, a profit which it is not intended a man should have. But upon the contract plan, the intention, and the declared intention is, that the contractor shall have every profit that can be made.* Does the trust lose anything by this concession? No; for it makes him pay for it before-hand. Does he pay nothing, or not enough? The fault lies, not in the contract plan in general, but in the terms of the particular contract that happens to be made: not in the principle, but in the application.

As to negligence, to state the question is to decide it. Of whose affairs is a man least apt and least likely to be negligent? another's, or his own?

Economy being put under the guardianship of contract-management, what more is it in the power of man to do for it? It has the joint support of the principles of reward and punishment, both acting with their utmost force, and both acting of themselves, without waiting for the slow and unsteady hand of law. What the manager gains, stays with him

* This is to be understood only in as far as profit and loss is the avowed object. As to sacrificing to schemes of profit some other of the ends in view, such as good morals, proper severity, or proper indulgence, it forms a separate consideration, and will be spoken of in its place.

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in the shape of reward: whatever is lost, falls upon him in the shape of punishment. In this way, public economy has at least all the support and security that private can ever have.

It has more: it has a support peculiar to itself — publicity; and that in every shape: at least it may have, and, as we have seen already, ought to have.* To publish his management, a man must attend to it; and the more particular he is obliged to be in his publication, the more particularly he must attend to it. What safeguard is there in private management, that can compare to this? It is not in human nature to go on for a length of time in a course of notorious mismanagement and loss. A man could not help seeing it of himself; and if he could, the public would not let him: he must mend his management, or quit the scene. False accounts he could not publish: what hope could he have of keeping the falsehood from discovery? The attempt to conceal mismanagement in this way would cost more trouble than to avoid it. To enable the public to look at his accounts, a man must look at them himself. No man travels quietly on in the road to ruin with the picture of it before his eyes. When a man fails through indolence or negligence, it is because he keeps no accounts, or has not the heart to look at them. There is little danger that a man chosen for such a situation should publish accounts that were imperfect or confused—it would be a confession of incapacity or fraud: if there were, a form might be prescribed to him, and a form exhibited by the first contractor, and approved of by the public, would be as a law to his successors. They might make it more instructive: they would not dare to make it less so.

Economy, I have said, should be the leading object; and it is principally because the contract plan is the most favourable to economy, that it is so much superior to every other plan for this kind of prison management. But turn the subject all round — view it in what lights you will, you will not find any on which the contract plan is not at least upon a par with trust-management, even in its least exceptionable form. Economy out of the question, turn to the other *ends* which a system of prison-management ought to have in view. In which of all those instances is a contracting manager more in danger of failing than an uninterested one? Turn to the two other *rules* that have been put in a line with that of *economy*, and in the infringement of which, in some way or other, every species of mismanagement in such a situation may be comprised: which of them is a contractor, with the guards upon him that we have seen, more likely to infringe, than a manager who has no pecuniary interest at stake? In every one of these points, we shall find the probity of the uninterested trustee exposed to seductions from which that of the contractor is free: that of the latter armed with securities with which that of the former, if provided, is not provided in the same degree. What I allude to is popular jealousy; but of that a little farther on. Turn to the *motives* which a man in this situation can find for paying attention to his duty. In the instance of the uninterested manager, what can they be? — love of power, love of novelty, love of reputation, public spirit, benevolence. But what is there of all this, that may not just as well have fallen to the contractor's share? Does the accession of a new motive destroy all those that act on the same side? Love of power may be a sleepy affection; regard to pecuniary interest is more or less awake in every man. Public spirit is but too apt to cool; love of novelty is sure to cool: attention to pecuniary interest grows but the warmer with age.

Among unfit things, there are degrees of unfitness. As trust-management is, in every form it can put on, ineligible in comparison of contract-management, so, among different modifications of trust-management, is board-management in comparison of management in single hands. When I speak of single-handed management as the better of the two, I mean it in this sense only, that, by proper securities, it may be made better than the other is capable of being made by any means. Pecuniary security against embezzlement — publicity in all its shapes, against speculation and negligence: in board-management, danger of dissension, want of unity of plan, slowness and unsteadiness in execution, are inbred diseases, which do not admit of cure.

When single management has given cause for complaints, it has been only on account of some accidental concomitant, or for want of those effectual checks of which it is in every instance susceptible.

A manager has in his hands large sums of public money more than are necessary for the service. Is this the fault of single management? No; but of the negligence of the law, which leaves so much public money in private hands. A manager holding public money in a quantity not more than sufficient, embezzles it. Is this the fault of single management? No; but of those who let him have it without account, or without security.

Can these guards, or any guards, ever put uninterested management even in single hands upon a par with interested? Never, till human nature is new made. They will prevent peculation; they will prevent gross negligence; they may prevent all such negligence as is susceptible of detection: will they screw up diligence and ingenuity to their highest

* Letters IX. and XII.

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pitch? Never, while man is man. A man himself can never know what he could get, unless the profit is his own. What a man has got and pocketed, or thrown away, you may punish him for: can you punish him for the extra profit which, for want of a peculiar measure of industry and ingenuity, such as the genial influence of reward could alone have inspired him with, he failed of getting? *Good* and *bad* are terms of comparison. Be your management ever so thrifty, or ever so productive, you can never know which epithet it deserves, till you have seen it in interested hands. Till then, you have no standard to compare it to. Good in comparison of what it has been, it may be bad in comparison of what it might be.

The advantages of the contract mode over both the others are not yet at an end. Along with uninterested management goes a salary. This is at least a natural arrangement, and, under the prevailing habits and modes of thinking, the only probable one. This salary is so much thrown away. "And will not a contractor equally require payment?" Doubtless: but where will he look for it? To the fruits of his own industry, not of other men's. The difference in point of productiveness between management with, and management without interest, is the fund he draws upon for his salary—and there needs no other.

I said *thrown away*; but it is worse than thrown away: it is so much thrown into the treasury of corruption, otherwise called the stock of influence. Whether, in the British constitution, the quantity of that stock requires diminishing, has been matter of debate: that it is in any need of increase, seems never to have been so much as insinuated.

In this respect, if trust-management in single hands is bad, board-management is worse. It is worse in proportion to the number of the members. Though the salary, and consequently the waste, should be no greater in this case than the other, the influence, and consequently the means of corruption, is abundantly so. One man with three hundred a-year is but one placeman: a board of three, with three hundred a-year amongst them, makes three placemen—each with a train of contingent remainder-men at his heels, all equally upon their knees to influence. In political corruption as in physical, to every mass of substantial putridity you have an indefinite sphere of equally putrid vapour. "And do not contracts make influence, as well as places?" Not if made as they ought to be, and might be. The contractor's dependence is on the advantageousness of his offer; the placeman's on the interest he can make with the distributors of good things.

Salary, according to the usual meaning of the word, that is, pay given by the year, and not by the day of attendance, so far from strengthening the connexion between interest and duty, weakens it; and the larger, the more it weakens it. That which a salary really gives a man motives for doing, is the taking upon him the office: that which it does not give him any sort of motive for, is the diligent performance of its duties.

It gives him motives, if one may say so, for the non-performance of them; and those the stronger, the more there is of it. It gives him pleasurable occupations, to which those laborious ones are sacrificed: it sets him above his business: it puts him in the way of dissipation, and furnishes him with the means. Make it large enough, the first thing he does is to look out for a deputy; and then it is what the principal gives the deputy, not what you give the principal, that causes the business in any way to be done.

In the instance of the contracting manager, the greater the success of the management, the stronger the motive he has to do his utmost to increase it. In this instance, the emolument is in reality a reward: in that of the placeman, only in name. In the latter case, the service with which the emolument is connected is, not the successful performance of the business, but the mere act of undertaking it.

This is not all. Salary, in proportion to its magnitude, not only tends to make a man who happens to be fit for his business less and less fit, but it tends to give you in the first instance an unfit man, rather than a fit one. The higher it is, the nearer it brings the office within the appetite and the grasp of the hunters after sinecures—those spoilt children of fortune, the pages of the minister and of every minister, who, for having been born rich, claim to be made richer—whose merit is in their wealth, while their title is in their necessities—and whose pride is as much above business, as their abilities are below it.

If you could get a manager for nothing, though he will serve you less badly than if he had a salary, he will not serve you so well as a contractor. What he gains or saves may be an amusement, but what he loses or fails to gain will be no loss to him. From his desiring the situation without salary, what is certain is, that he loves the power: what is not certain is, that he loves the business. Should the work at any time be too heavy for him, he can shift it off upon anybody, the power remaining where it was. From his liking the business while it is a new thing, it does not follow that he will continue to like it when the novelty of it is worn away. From his retaining the situation when he has got it, it does not follow that he likes the business of it, or that he likes any business; for the giving it up would require an effort, and the retaining it requires none. The chance of

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extraordinary profit (I mean with reference to trust-management, for with reference to common mercantile management it is but ordinary) is upon the same inferior footing as before; and so is the security against positive loss, whether resulting from negligence or peculation. In the nature of things is it possible that a man who has no interest in the business should be as much attached to it, as zealous to make it succeed, as one whose all depends upon it?

The unpaid, as well as uninterested manager, stands behind all others on another account. The more confidence a man is likely to meet with, the less he is likely to deserve. Jealousy is the life and soul of government. Transparency of management is certainly an immense security; but even transparency is of no avail without eyes to look at it. Other things equal, that sort of man whose conduct is likely to be the most narrowly watched, is therefore the properest man to choose. The contractor is thus circumstanced in almost every line of managment: he is so more particularly in the present. Every contractor is a child of Mammon: a contracting manager of the poor is a blood-sucker, a vampire; a contracting jailor, a contracting manager of the imprisoned and friendless poor, against whom justice has shut the door of sympathy, must be the cruellest of vampires. The unpaid, as well as uninterested manager, is, of all sorts of managers, the most opposite to him who is the object of this distinguished jealousy: he expects and receives confidence proportionable; though on several accounts not entitled, as we have seen, to so much, he enjoys more. A man who, in a station so uninviting, has the generosity to serve for nothing, while others who occupy the most flattering situations are so well paid for it, will assume to himself accordingly, and make in other respects his own terms. Unless the honour of serving the public *gratis* were generally put up to auction, a plan never yet proposed, nor the more likely to be adopted for being proposed, this must always be the case. Standing upon the vantage ground of disinterestedness, he looks down accordingly upon the public, and holds with it this dialogue:—*Gentleman Manager*—"I am a gentleman: I do your business for nothing: you are obliged to me." *Public*—"So we are." *Gentleman Manager*—"Do you mind me?—I am to get nothing by this:—I despise money:—I have a right to confidence." *Public*—"So you have." *Gentleman Manager*—"Very well, then;—Leave me to myself—Never you mind me—I'll manage every thing as it should be—I don't want looking after: don't you put yourselves to the trouble." *Public*—"No more we will." What is the fruit of all this good understanding? Frequently negligence: not unfrequently peculation.* Peculation, where it happens, is not liked: but of what is lost by negligence, no

* It was but the other day that a very respectable society, instituted for the most benevolent of purposes, lost in this way more than half its funds. They were in a single hand: board management would have saved them. Is board-management therefore necessary? By no means. The man in whose hands they were lodged had nothing of his own: no pecuniary security had been required of him. Legal powers were wanting: no authority to examine him—no court to summon him to. He would give in no accounts: perhaps he had kept none. What he had, he gave: fine sentiments and fine periods in plenty. He was a gentleman: he had given his time for nothing: the same benevolence that had prompted others to give their money, had prompted him to receive it. Was such a man to be questioned? Questions import suspicion. Suspicion, by a man of fine feelings, is only to be answered by defiance.

Not long ago, another man ran away, having been detected in a course of fraud, by which he had gained to the amount of some thousand pounds at the expense of a parish. How came this? He, too, was a gentleman: serving the public without pay, he was not to be suspected. He gave in accounts from time to time, such as they were; but, not being published and distributed, they were accessible only to a few, who had too much good manners and too much faith to look at them.

Neither is board-management, even where carried on without pay, by any means exempt from peculation. I have instances in my eye; but what is not public, cannot be mentioned publicly. Nor can instances be wanting to any one who has read the instructive but melancholy view given by Howard in his book on Lazarettos, of the state of the charities in Ireland. In England, parochial peculation is become proverbial.

One of the Scipios, being in a pecuniary office, was called upon for his accounts:—"Gentlemen," said he, "this day so many months, I got a prodigious victory." "*Scipio for ever!*" was the cry, "*and no accounts!*" According to the mob of Scipio's days, and according to the mob of historians of all days, the author of the motion was a calumniator: according to others, Scipio had a good countenance, and knew the people he had to deal with. In Scipio's case, were I guilty, and bold enough, I would do exactly as Scipio did. Were I innocent, I should regard the obligation of publishing accounts, not as a burthen, but as a privilege.

A prevailing but erroneous propensity, derived from the times when the means of publicity were not so easy as at present, is to cramp power and leave the exercise of it in the dark. Every thing is by this means against the upright manager—every thing in favour of the corrupt and intriguing one. A board is instituted, consisting of members with powers apparently equal, but of whom all but one are reduced to cyphers, by support secretly whispered into the ear of one, and withholden from the rest. This is another instance that may be added to the ways in which the mischief of division is palliated, and a government, apparently of many, reduced to a government by one. Where, in consideration of character and situation, anything more than ordinary in point of confidence is thought fit to be reposed, removal of clogs and enlargement of

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account is taken. So good are the public, and in theory so fond of virtue, they had rather see five hundred pounds wasted at their expense, than five shillings gained.

Between the public and the candidate for a management-contract, there passes, or at least might be made to pass, a very different conversation:—

Public—"You are a Jew."

Contractor—"I confess it."

Public—"You require watching."

Contractor—"Watch me."

Public—"We must have all fair and above board. You must do nothing that we don't see."

Contractor—"You shall see every thing: you shall have it in the newspapers."

Public—"Contractors are thieves.—Sir, you must be examined."

Contractor—"Examine me as often as is agreeable to you, gentlemen—any of you, or all of you. I'll go before any court you please. Thieves stand upon the law, and refuse answering when it would show you what they are. I refuse nothing. I stand upon nothing, gentlemen, but my own honesty, and your favour. If you catch me doing the least thing whatever that should not be, let my Lord Judge say go, and out I go that instant."

Choosing board-management, the penitentiary act, to do it justice, was as moderate under the articles of salary and influence as it well could be. Seven persons only can be found with useless salaries:* the two nominal governors, the three who compose the governing committee, their clerk, and the inspector, in as far as his office regards the penitentiary-house. The governor's and committee clerk's salary was to be settled by the committee: the committee, though appointed according to custom by the crown, were to have their salaries settled by another authority, the justices of the peace in sessions. The inspector, an officer to be appointed by the crown, is the only one of them whose salary is fixed by the act—£200 a-year, a salary moderate enough, if it had been of any use. Even the board, thus confined to the smallest number possible, were to have no pay but in proportion to attendance—an excellent regulation, which, while it insures assiduity in this bye-corner of the political edifice, is a satire on the rest.†

powers is the proper shape for it to show itself in. As to secresy, there are few affairs or departments indeed, in which, except it be just for the moment, it can be either necessary or of use: none at all in which the curtain might not and ought not at some period or other to be drawn aside. And it is one of the advantages attending the increased power of the public eye, that the amplitude of discretion, so necessary in most instances to good management, may be given on such terms with more security than heretofore.

* Seven, did I say? I was too hasty—I should have said nine; adding to the seven, one of the two surgeons, and one of the two chaplains.—Two sexes, two houses: two houses, two chaplains, and two surgeons. This is trust-logic, fine gentleman's logic, placeman's logic: contract logic is of humbler mould.

1. As to *Surgeons.*—Suppose one sick out of ten: 90 sick at a time out of the 900. The supposition is extravagantly large and beyond experience; but it will serve for a supposition. For tending these 90, there is the medical assistant's whole time: a surgeon will attend a greater number than this at an hospital, in addition to his private practice. For the mechanical part of the business, he might likewise find assistance enough if necessary amongst the most intelligent and orderly of the prisoners. This is actually practised on board the hulks. One surgeon, then, to make trial with? *No.* Well, but if upon trial of two, one is found superfluous? *No* again: the act is inexorable. Though the committee and everybody else should find one of the two useless, two there are to be, in spite of all the world. See § 19. The paragraph puts the case, and decides upon it.

2. As to *Chaplains.*—Divine service, instead of twice in each of two chapels, four times a-day, suppose, in one: how many curates are glad to do this, besides marriages, baptisms and burials? *Oh, but Sunday is but one day. You forgot the other six.* No: not I indeed. I know who do; but I am not one of those. My chaplain would not find less to do on the sixth than on the seventh. But this is heresy: and what right have I to attribute my heresies to the authors of the penitentiary act.

But why service at different times, even upon the common plans? In the Magdalen chapel, is there not a numerous company of females concealed from every eye?

† A word or two may not be amiss by way of recapitulation. Interested management, when accompanied by the safeguards of which it is susceptible, has the advantage of uninterested management, however modified: 1. In carrying the probability of the best economy to the highest pitch; 2. In exciting scrutiny by the jealousy it inspires. In these particulars, it has the advantage of uninterested, even where the latter is in single hands, and those unpaid.

Where trust-management cannot be had without salary, contract-management may be expected to have the farther advantage of saving the amount of the salary.

The inconveniences resulting from salary are: 1. Waste of money; 2. Increase of the influence of the crown; 3. Tendency which the salary has to give birth to negligence, and that partly by setting a man above his business, partly by throwing him in the way of occupations that draw him off from his business; 4. Tendency which it has to throw the place into the hands of a person originally unfit for it.

The farther inconveniences resulting from board-management, in contradistinction to trust-management in single hands, are: 1. Multiplied waste of money; 2. Multiplied increase of influence; 3, 4, 5, and 6. Detriment to economy, by delay, by want of unity of plan, by fluctuation of measures, and by disagreement.

Payment according to attendance is a good security, as far as it goes, against non-attendance: (a deposit besides, to be returned upon attend-

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The contract plan, I have said, saves a world of regulations. It does most certainly. What object should they have? *Prevention of cruelty?* Details will never do it. If the disposition exist, tie it down in one shape, it breaks out in another. Checks for this purpose must be of a broader nature — broad enough to comprehend the mischief in all its forms: life-insurance, transparent management, summary justice.* — *Prevention of undue lenity and indulgence?* A very little in this way will suffice. Self-interest is the great check here: it may be trusted without much danger. Few indulgences but either cost money, or diminish labour. The only danger is, lest some which are improper on other accounts should be granted for the sake of money; such as spirituous liquors,† gaming, and a few others. These, indeed, may be refused by law: but these come within a narrow compass. — *Economy?* Is that the object? Under the contract plan, the idea would be too ridiculous. Is it in spite of his teeth, that a man is to be made to pursue the management that would answer best to him?

Under the plan of trust-management, such care may not be altogether superfluous. Two qualities are requisite — intelligence and industry. On neither head can the legislator be absolutely at his ease. Of himself he is sure: he cannot be equally sure of his unknown deputy. He himself has the business at heart and in his thoughts: whether the future manager will either understand or care anything about the matter, is as it may happen. The principal has to teach him his duty, and when taught, to keep him to it. Is the contractor to be treated in the same manner? Yes, if it requires the same pains to make a man pursue his interest, as to keep him to his duty.

Mistakes, if made by legislation, cannot they be corrected by legislation? O yes, that they may; and so may mistakes in generalship. In what time? With good fortune, in a twelvemonth: with ordinary fortune, in two or three years, or in another parliament. When the army has been cut to pieces for having been enacted to march the wrong way, get an act of parliament, and you may order a retreat: when the capital has been sunk in a bad trade, get an act of parliament, and you may try another.‡

Spite of all this, economy was to be beat into men's heads by a legislative hammer. Rules of economy for almost every branch of the concern — building, employment, diet, bedding, furniture. And what comes of it all? — We shall see. It will be worth seeing. Who are they, whose labours, thus employed, are worse than thrown away? — are they without name or reputation? They are among the highest on the list of public men.

Notwithstanding all this pains taken to teach, as well as to enforce good economy, should bad economy prevail after all, observe the remedy. By § 62, provision is made for "checking or redressing waste, extravagant expense, and mismanagement." Justices in sessions, upon inspection of the accounts, may report it to the King's Bench, "who shall take order therein immediately:" but the waste must be "notorious," and the mismanagement "gross." — *Immediately* after what? After hearing the report, that is, half a year, perhaps, after the "observation" of the mischief, and a quarter of a year more, perhaps, after the commission of it — the delinquency going on all the while. Whoever will take the trouble to compare the times of quarter-sessions and law-terms will find that this remedy, such as it is, is in season only in the spring and winter months, and then is not a very speedy one. Against "waste," at least, and "extravagant expense," and every mismanagement by which the contractor would be a loser, the remedy afforded by contract-management is rather more simple, and is in season all the year round.

Oh, but this contract plan — it's like farming the poor: and what a cruel inhuman practice that is! — Be it so in that instance: the present is a very different one.

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ance, would be still stronger:) but still it can never put board-management upon a par with single management, guarded as above, much less upon a par with contract-management. Where the mind is absent or indifferent, the presence of the body is but of little use.

To what degree of perfection might not government be carried, were it possible to give equal strength to the connexion between interest and duty in every other line of service! — were it possible that, in the administration of justice, for instance, the judge, without any formality of law, should be a gainer of course by every right judgment he gave, and a proportionable loser by every erroneous one! — that, in the spiritual department, the pastor should not only gain, but be seen to gain, a step himself, by every successful lift he gave to any of his flock in the road to heaven, and to suffer for every soul that lost footing by his negligence!

* What details are there on this head in the law of master and apprentice?

† A prohibition on this head, inserted into the penitentiary act, has been attended with the happiest consequences. To this cause principally, if not solely, may be attributed the general good health of the convicts on board the hulks, as noted in Part I. Section 24, and of those at Wymondham. The success of this single clause has made ample payment to the authors of the penitentiary act for all their trouble, and to the public ample atonement for their errors.

‡ Looking at the governor, and his governors the committee, I cannot help thinking of a general under field-deputies. One set is, I believe, the most ever general was saddled with, and they have commonly given him sufficient trouble. The general of the penitentiary act has three sets of them, one above another; standing committee, justices in sessions, and judges of assize.

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1. The objects or *ends* in view, so far from being the same, are opposite. There, comfort: here, punishment; moderate and regulated punishment, indeed, but, however, punishment. In the one case, whatever hardship is sustained is so much misery in waste. in the other case, howsoever it be to be regretted, it is not altogether lost; it contributes, at any rate, to swell the account of terror, which is the great end in view.

2. Another difference is in the *checks*. Here, an unexampled degree of publicity: there, next to none. There, though no hardships are intended, the severest may take place: here, whatever are intended to be felt are intended to be seen; and nothing in that way that is not intended, can stand any chance of remaining concealed. Who but parishioners, and how few even of them, ever think of looking into a poor-house? But in what corner of a Panopticon penitentiary-house could either avarice or negligence hope to find a lurking-place? *Time is fatal to curiosity.* True, in an individual, but not in a succession of individuals. The great dependence of the penitentiary act is on a single inspector — *one* inspector for the *thousand* houses its town was to contain, and who was also to serve for the hulks, "and all the other places of criminal confinement in London and Middlesex" besides:* and so well satisfied is it with this security, as to allot £200 a-year to pay for it. Let money or friendship (no very extravagant supposition) make a connexion between this inspector and the managers he is to inspect, what is the security worth then? Here, to *one* room, you have inspectors by *thousands*. Is it possible that a national penitentiary-house of this kind should be more at a loss for visitors than the *lions*, the *wax-work*, or the *tombs*? Of the 25,000 individuals born annually in London, I want but one out of a hundred, and him but once in his life, without reckoning country visitors. Call it a spectacle for youth, and for youth only: youth, however, do not go to spectacles alone.

3. A third difference respects the *quality* of the managers. For the poor-house of a single parish, what can you expect better than some uneducated rustic or petty tradesman? the tendency of whose former calling is more likely to have been of a nature to smother than to cherish whatever seeds of humanity may have been sown by nature. For a station of so conspicuous and public a kind as that of the governor of a national penitentiary-house, even upon the footing of a contract, men of some sort of liberality of education can scarce be wanting — men in whose bosoms those precious seeds have not been without culture. Such men were certainly not wanting for the originally-designed penitentiary-house: upon what principle should they ever be despaired of, for what I hope I may style the improved one? In a concern of such a magnitude, the profit, if it be any thing, can hardly be inconsiderable: the number and quality of the candidates may be expected to be proportionable. A station that is at any rate conspicuous, and that may be lucrative — a station in which much good as well as much evil may be done — in which no inconsiderable merit as well as demerit may be displayed in a line of public service, is in little danger of going a-begging. And should the establishment be fortunate in its first choice, the reputation of the servant will help to raise the reputation of the service.

Where, then, is the resemblance? Not that I mean to pass any censure on contract-management in the other instance. It may be eligible without any modifications: it may be eligible only under certain modifications: it may be radically and unalterably ineligible. All this I pass over, as being foreign to the purpose.

Whoever else may be shocked at the idea of farming out prisoners, the authors of the penitentiary act are not of the number. They approve it, and adopt it: they confirm it on board the hulks. What is the business done, or supposed to be done, on board those vessels? Scraping gravel from the bottom of a river—a business in which there was nothing that could be gained or lost to anybody: nothing to buy but necessaries, nothing to make, nothing to sell—no capital to be disposed of. What was the business intended to have been carried on in the penitentiary-houses? A vast and complicated mercantile concern—not one manufacture, but a congeries of manufactures. They saw before them two establishments, a mercantile and an unmercantile one: The mercantile, affording peculiar aliment and temptation to peculation; — shrinking, like every other mercantile concern, from the touch of extraneous regulation; — rendering official and mercenary inspection the less necessary, by the invitation it holds out to free and gratuitous inspectors; — possessing, in that innate facility of inspection, a peculiar safeguard against any abuses that could result from inhumanity or negligence. The unmercantile concern, affording, in comparison, scarce any aliment or incitement to peculation; — containing nothing of mercantile project that could be hurt by regulation; — at the same time, by the very nature of the place and of the business, excluding all promiscuous affluence, all facility, and almost all possibility of spontaneous visitation; — possessing, in consequence, no natural safeguard against negligence or inhumanity, but rather offering to those, and all other abuses, a perpetual screen: — in a word, the mercantile

* § 63.

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concern, by every distinguishing circumstance belonging to it, repelling regulation and trust-management: the unmercantile one, calling for those checks, and admitting of them with as little inconvenience as any other that could be imagined. Such are the two establishments:—what were the modes of management respectively allotted to them? To the mercantile, trust-management, board-management: to the other, contract-management. The mercantile, loaded and fettered with incessant regulation, permanent as well as occasional, known and unknown, present and future, is delivered over to a body of managers who have no interest in the success—a prey to delays, to want of unity of plan, to fluctuation, to dissension. The unmercantile and uninspectable one, left altogether without regulation:* the prisoners abandoned to the uncontrouled and uncontroulable discretion of a single despot, taken from the white-negro trade.† Where there is management that regulation might spoil, they regulate without mercy: where there is nothing to spoil, they abstain from regulating, as if for fear of spoiling it.

SECTION III.

OF SEPARATION AS BETWEEN THE SEXES.

In all plans of penitentiary discipline, the distribution of the prisoners into classes is a point that has been more or less attended to. In this classification, the object regarded as most important has been the separation of the sexes. In the present plan, provision for that purpose has not been neglected. On this head, as on most others, the provision made must be governed in some degree by the peculiar structure of the building. The means employed in buildings of the ordinary form have little or no application here.

Two modes of effecting the separation offer themselves at first view. The one is, to provide for female convicts a building and an establishment entirely separate: the other is, to allot to this purpose, if the same building is employed for both sexes, at least a separate ward. The unfrugality is an objection that applies with more or less force to both these expedients.

It applies with particular force to the case of a building and establishment altogether separate. The numbers to be provided for being variable, a fixed provision must ever be attended with a loss. The fluctuation to which the total number of prisoners, male and female taken together, is liable, is a distinct object, for which, upon this plan, provision has been already made. But the proportion between males and females is equally liable to vary and to fluctuate. Provide two establishments, one for males and a separate one for females: the one may be comparatively empty, while the other overflows; at the same time that no relief can be afforded by the superabundance of room in the one, to the deficiency of it in the other.‡

The same inconvenience will still obtain in a greater or less degree, in the case of separate wards. Whatsoever be the proportion fixed, cells will be vacant in one part, while they are wanting in the other.

The best arrangement, were the numbers

* There is indeed a clause, but a very vague one (§ 60,) for subjecting the superintendents of the hulks to the "direction given" respecting the "governors of the penitentiary-houses;" but in terms so general and pregnant with ambiguity, that little, if anything, can be collected from it. One thing only is certain, viz. that it leaves no room for the introduction of any regulations besides those given in the act itself; for, by § 16, such future regulations can originate only with the committee of *three*, whose authority is confined to penitentiary-houses.

† This refers to the class merely, let it be observed, and not to the individual. Unhappily where conduct is buried in darkness, it is by the class only that the individual can be judged. The inspector mentioned in the act has never been appointed. No powers whatever are given him, unless the right of entry given by implication is to be called a power. The same right is given to justices of the peace within their territory (§ 41.) He was to visit and report four times a-year. He was to have enough to do besides; for he had the same powers with regard not only to the penitentiary-houses, but all the other "places of criminal confinement in London and Middlesex." (§ 63.)

‡ The colonization plan, if it is to go on, and if it is to be consistently pursued, will add a factitious cause of variation to the above-mentioned natural ones. The average number of female convicts is in a large proportion inferior to that of the males. According to the penitentiary act, it should be at the most only as one to six, since, in the penitentiary-house, among 900 prisoners there were to have been only 300 females to 600 males, and there have always been more than twice 900 males on board the hulks. Were the whole number of females without exception sent to colonize, the number would therefore still remain far short of being adequate to the purpose. As far as concerned the female sex, the only use of a penitentiary panopticon would be to keep them during the interval between one colonizing expedition and another. At one time, then, it may contain hundreds; at another time, none, unless it be the case of married women whose husbands were not comprised under a similar sentence. I know of no case that would afford an exception:—not that of women past child-bearing; not that of those in whom that faculty had suffered a premature extinction; especially as in the latter case the matter of fact does not admit of being ascertained. Even were population out of the question, women would be of indispensable necessity for society and service. In such a situation, everything in the shape of a woman is inestimable. Here a crowd of reflections present themselves, which however must be dismissed, as not being to the present purpose.

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such as to need it, and the proportions suitable, might be to have three Penitentiary Panopticons; one always filled with males, another always filled with females, and a third to receive, in such proportions as accident furnished, the overflowings of the other two. The difficulty here in question having no place in either of the unmixed establishments, I proceed here on the supposition of a mixed one.

Conceive such a Panopticon divided into two sides: that on the right of the entrance I call the *male* side; that on the left the *female*. For the male side, I provide as many male inspectors as shall be found requisite; adding, at least, one female, whom I style the matron, for the female side. To each sex I allot a separate staircase, running from top to bottom. No female is ever to set foot on any part of the male staircase: no male on any part of the female. Neither is any male, in passing from his cell to the male staircase, to pass by any of the women's cells: he is to come round to the male staircase, however distant: and so, *vice versa*, in regard to females.

Supposing females enough to occupy the whole female side of two stories of cells, thus far there is no difficulty. I place them in the lower pair of cells, subjected to inspection from the main or lower story of the inspection-tower, viz. that which is underneath the chapel, and in which the annular inspector's gallery incloses a circular inspector's lodge. The left-hand semicircle of the whole circuit, lodge, and inclosing gallery together, I allot to the matron, with her female assistant or assistants, if such should be found necessary. The right-hand I appropriate to the male inspector with his subordinates. In the lodge, a moveable screen marks their respective territories. In the encircling gallery, a similar screen or a curtain answers the same purpose.*

As far as *sight* is concerned, two pieces of canvas, hung parallel to each other at about 18 inches distance (the thickness of the partition-walls of the cells) across the intermediate area and the cell-gallery, will serve effectually enough to cut off from the prisoners of each sex all view of those of the other, even where the cells are contiguous. In regard to *conversation*, the males on the one side the separation-wall, and the females on the other, must respectively be prohibited from approaching within a certain distance of the end of that wall; that is, from approaching within that distance of their respective grates: and to enforce the observance of this prohibition, as well as to save the parties from unintentional transgression, a moveable interior grate, or lattice-work, very slight and very open, or netting, may be placed within each of the two cells at the requisite distance from the main grate.†

As far as *hearing* is concerned, the separation, it is evident, would be effected in a manner still more simple and effectual, if between the males on the one side and the females on the other, a whole cell could be left vacant. If, then, the numbers are such as to leave any such vacant cells, the vacancy will of course be left in the spot where it answers the purpose of separation. Should the number of cells occupied by females be even, but less than the number contained in the female side of two stories of cells, the mode of effecting the separation is almost equally simple. The set of moveable partitions must be shifted accordingly, viz. the curtains crossing respectively the inspector's gallery, the intermediate area at that height, and the cell-gallery, and the screen which separates the matron's side from the male side of the lodge.

If the number of female cells, though still even, should be greater than as above, two modes of making provision for it present themselves. One is, to enlarge the matron's side of that floor at the expense of the male inspector's, as the latter was, on the former supposition, enlarged at the expense of the former: the other is, to leave the division even, and take what farther cells are requisite for females from a higher pair of cells; parting off the corresponding part of the inspection-gallery, the annular-well, and the cell-galleries, as before.

Is the number of cells an uneven one? The mode of effecting the separation is again somewhat different, though still scarcely less obvious than before. In this case, the female part in one of the stories of a pair of stories of cells would extend further than in the other: hang the separation-curtain in the annular area as you please, a female cell must be exposed to the view of a male inspector, or a male cell to that of a female one. To obviate this irregularity, one of the cells must be left vacant. If the number on the establishment should be short of the full complement, it would be only leaving the vacancy here, instead of elsewhere: if it should have the full complement, or more, the inhabitants of the vacant cell must be turned over to other cells, which will thus be in the case already explained of having a *super-complement*.

* It is scarce necessary to observe, that screens and curtains, and other such moveable partitions intended as obstacles to sight, must be double, or may be single, according to circumstances. Where the eye meant to be eluded can gain a near approach, they must be double; otherwise a slit or a pin-hole would be sufficient to frustrate the design: when such approach is not to be apprehended, a single screen answers the purpose.

† It must have a door of the same materials, with a lock to it, corresponding to the door of the exterior grate.

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On the sunk story, from which the exit is into the yards, and in particular at the exit, the separation is still more perfectly effected, and more easily managed. A single piece of canvas, let fall from the inspector's bridge across the intermediate area, does the business at once.

Here may perhaps occur, as a disadvantage, what, on a general survey, appeared in the light of an advantage — that each inspector, over and above the perfect view he has of his own pair of cells, has a partial view of all the others in the same pile. Hence it will be observed, that notwithstanding the precautions above detailed, a male inspector will have some view of a female cell; and *vice versa*, though it be less material, a female inspector will have a similar view of a male cell. The answer is, that the boundary line, viz. that at which a prisoner begins to be visible to an inspector in the gallery above or below the one belonging to the cell in question, will appear in practice beyond danger of mistake. Within this line, which may be sufficiently defined by a very simple mark, such as a rope hung across, the female prisoners may be warned and enjoined to confine themselves at stated portions of the twenty-four hours; for in regard to such an imperfect and distant view, decency is the only consideration that makes it very material to place the female part of the prisoners so completely out of sight of the male part of the inspectors: and it is only to certain times and certain occasions that the laws of that virtue will in such a case apply. The imperfect view from a superior or inferior story of the inspection-part is in few instances so extensive but that a female prisoner, in dressing herself, for example, or undressing herself, may be perfectly out of the reach of a male inspector's eye; and in those few instances, provision may be made, either by leaving of vacancies, or by interposition of screens, in manner already mentioned. All this while, what must not be forgotten is, that a female prisoner cannot be exposed in a manner ever so imperfect to the eye of a male inspector, without being exposed in a much greater degree to the observation of one of her own sex; a circumstance which affords sufficient security against any voluntary trespasses against decency that might be committed by a female prisoner, through impudence, or in the design of making an improper impression upon the sensibility of an inspector of the other sex.

The same consideration will serve to obviate an objection which the slightness of the partitions that separate the male from the female side of the inspection-tower might suggest. The great object in regard to the separation of the sexes is that between prisoners and prisoners; and that object is completely provided for. As to what concerns prisoners on the one hand and inspectors on the other, it is only at certain times that the female prisoners need, or even ought, to be out of all view of male inspectors; at other times, the utmost that can be requisite is, that they should not be exposed to the view of the inspectors of the opposite sex, without being at the same time exposed, in at least equal degree, to those of their own. Neither of these objects is more than what an ordinary attention to discipline is sufficient to insure.

A due attention to the same considerations of time and circumstance will be sufficient to insure the same regard to decency in that part of the discipline which concerns the inspection of the external yards. While the female convicts are taking their air and exercise at one of the walking-wheels, an inspector of the opposite sex, especially at the distance at which he is placed in the look-out, is as unexceptionable as one of their own. When bathing is to be performed by females, it is in a yard into which no prisoner of the other sex need ever set foot, and exposed to no other inspection than that of a female inspector occupying her quarter in the look-out; or, if necessary, the times of bathing might be different for the different sexes, and each inspector might in his turn give place to the other, quitting the look-out altogether.

The good Howard expresses himself much distressed to know what to do about making a choice between the sexes for the management of a penitentiary-house for females.* Female rulers might want firmness: in male ones, probity and impartiality might be warped by the attraction of female eyes. The panopticon principle dispels this, as well as so many other difficulties. Among the prisoners, a coalition between the sexes would be an abuse; among the inspectors, it is a remedy against abuse. The weakness of the matron would find a support in the masculine firmness of the governor and his subordinates: a weakness of a different kind, on the male side of the establishment, would find its proper check and corrective in the vigilance of matronly severity. As to the matron and her subordinates of her own sex, it is not surely too much to assume, that for these stations individuals will be chosen, to whom age as well as character have given an authority not to be shaken by any such improper influence. The mixed inspection, let it be observed, I suppose to be simultaneous: if alternate only, the check would have little force. The male ruler would have *carte blanche* while out of the eye of his female colleague.

Must the iron law of divorce maintain throughout the whole of so long a term an unremitted sway? Can the gentle bands of wedlock be in no instance admitted to assuage

* On Lazarettos, p. 225.

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the gripe of imprisonment and servitude? Might not the faculty of exchanging the first-allotted companion, for another far otherwise qualified for alleviating the rigours of seclusion, be conceded, without violation of the terms, or departure from the spirit of the sentence? Might not the prospect of such indulgence be an incentive to good behaviour, superadded to all that punishment can give? These are questions to which a humane manager would surely be glad to find (and why need he despair of finding?) a fit answer on the lenient side.

SECTION IV.

OF SEPARATION INTO COMPANIES AND CLASSES.

A MODE of separation according to a plan of division into classes, being exhibited in Plate III., something will be expected to be said in explanation of it.

As to this part, the draught had two objects: one was, to show in what manner the inspection principle might be applied in undiminished perfection to an uncovered area, and that without prejudice to any number of divisions, which, in what view soever, it might be found convenient to make in it: the other was, to show in what manner the mischiefs so much lamented by Howard and other prison reformers, as resulting from promiscuous association, might be diminished by a division of the prisoners into classes, accompanied by a local and physical separation correspondent to that ideal one.

Dissatisfied with the division into classes, though carried to a degree of improvement hitherto without example, I turned my thoughts to the preservation of the degree of seclusion observed in the distribution of the prisoners among the cells, viz. a division into small and regulated companies: and it was in the course of this inquiry that I hit upon the plan of airing, of which the *marching parade* is the scene.*

The mischiefs in question being, by means of this plan of airing, obviated, if I am not mistaken, as far as the nature of things will admit, all other plans which fall short of obviating those mischiefs in equal degree, and accordingly the above-mentioned plan of division into classes, are consequently superseded: in this one, therefore, of the two points of view above mentioned, the divisions exemplified in the draught are of no use.

A few additional observations, for the purpose of placing in the clearest light the relative eligibility of the several possible modes of disposing of prisoners in respect of society among themselves, may not be altogether ill bestowed.

The principal and most simple modifications of which the management in relation to this head is susceptible, stand expressed as follows:—

1. Promiscuous association.
2. Absolute solitude.
3. Division into limited companies.
4. Separation corresponding to a division into classes.
5. Alternation of solitude with promiscuous association.
6. Alternation of solitude with division into limited companies.
7. Alternation of solitude with separation according to classes.

Of these courses, the first stands reprobated on all hands. The second I have rejected for the reasons given at large in Part I. Section 6. The third is that which I have preferred to the second, for the reasons given in the same section. The fourth is that which occurred to me at first as preferable to the first and second, but stands superseded by the third. The fifth is that established by the penitentiary act, and the plans which follow it, partly as it should seem for want of viewing the evil in its full magnitude, partly for want of knowing how to obviate it. The utmost improvement to which that system would naturally conduct is the exchange of this fifth mode for the seventh. The sixth is mentioned here only to complete the catalogue, its inutility being indicated by the same considerations which show the sufficiency of the third.

Companies and classes — where is the distinction?— Here: in companies, the numbers are determinate; in classes, indeterminate. In the plan represented by the draught, the classes, though more in number than have ever yet been discriminated, would still, in an establishment of any magnitude, be few: but though they were as numerous as the cells by the number of which that of the proposed companies is determined, the division according to classes would never coincide with or answer the purpose of the division into companies. Why? Because the number of individuals in each class being essentially indeterminate, some classes might be empty while others overflowed; and in those that overflowed, the number would consequently exceed the measure pitched upon as the greatest that could be admitted without departing from the ends in view.

Of the separation according to classes, as contradistinguished from the separation into companies secured as by the airing plan, the chief inconveniences are the two following: it leaves the convicts still, as we have seen, in *crowds;* and if pushed to any length, and carried into effect by separation-walls, it is

* See Part I., p. 104.

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proportionably attended with a great addition to the expense.*

That it leaves the prisoners in crowds is evident; for separation according to classes implies association as between individuals of the same class: of whom, though the separation resulting from the classification were to be carried ever so far, the numbers would still, as we have seen, be indeterminate.

Crowds, among men whose characters have undergone any sort of stain, are unfavourable to good morals. This property belongs to them independently of any mischievous communications that may result from the qualities of individuals. They exclude reflection, and they fortify men against shame. Reflection they exclude, by the possession they take of the attention, by the strength as well as variety of the impressions they excite, by the agitation which is the accompaniment of the incessant change. Their effect in hardening men against shame is not less conspicuous. Shame is the fear of the disapprobation of those with whom we live. But how should disapprobation of criminality display itself among a throng of criminals? Who is forward to condemn himself?—who is there that would not seek to make friends rather than enemies of those with whom he is obliged to live? The only public men care about is that in which they live. Men thus sequestered form a public of their own: their language and their manners assimilate: a *lex loci* is formed by tacit consent, which has the most abandoned for its authors; for in such a society, the most abandoned are the most assuming, and in every society the most assuming set the lead. The public thus composed sits in judgment over the public without doors, and repeals its laws. The more numerous this local public, the louder its clamour, and the greater the facility it finds of drowning whatever memory may be left of the voice of that public which is absent and out of view.

In the publications of Howard and other prison-reformers, two sorts of associations I observed, affording so many standing topics of regret: mixture of debtors with criminals; and mixture of the as yet unhardened with the most hardened and corrupted among criminals. Other associations might also here and there be noticed in the same view: such as that between minor delinquents and such classes of criminals whose offences were of the deepest dye; that between convicted and unconvicted criminals; and that between criminals under sentence of death, and others whose lot was less deplorable. But it was in the two instances first mentioned that the impropriety seemed to present itself in the most glaring colours.

In a penitentiary-house, one only of all these mixtures can come in question; viz. that between the hardened with the unhardened, the raw with the old offender.

Under the penitentiary act, and the plans of management that have been grounded on it, the condition of the prisoners alternates between the two opposite extremes: a state of absolute solitude during one part of the twenty-four hours; a state of promiscuous association in *crowds* during the remainder. This plan, it has been shown, unites the ill effects of solitude and association, without producing the good effects obtainable from the former. To vacant minds like these, a state of solitude is a state of melancholy and discomfort; which discomfort, by the perpetual recurrence of promiscuous association, is in the way of reformation useless. It is the history of Penelope's web reversed: the work of the night is unravelled by the day.†

* What startled me, and showed me the necessity of probing the subject to the bottom, was the being told by an architect, that the walls alone as expressed in Plate III. might come to two or three thousand pounds. It was high time then to inquire what the advantages were that must be so dearly paid for.

† Sensible of the inconvenience, the contrivers of the system have done what occurred to them in the view of obviating it. No two or more prisoners are to work together without a room on purpose, and one or more inspectors to attend them. This at working-times; while at the times of "meals," and airings, and "divine service," the plan of seclusion is given up as unattainable (§ 33.) What can be said of this? Immense means provided, and the end sacrificed, all in the same breath. Enormous expense, and the whole of it thrown away. There must be as many lodging-rooms as prisoners; there may be as many working rooms; and there must be as many inspectors as working-rooms. So far the act is explicit. Now for inference.—Everything to countenance the multiplication of working-rooms in this view; nothing at all to limit it: while in the same section such care is taken to set limits to the magnitude of the lodging-rooms. It is said, that where their employments will admit, they are at working times to be kept separate: is it *not* said that they shall or may work in such case in their lodging-rooms? Lodging-rooms are mentioned all along as distinct from working-rooms; and where the employment may require two persons to work together, the "room is to be of suitable dimensions." What is the inference? that it must be distinct from the lodging-rooms, and ought to be of double their size. The declared wish is, that "during the hours of labour, they may be kept separate and apart," as much as "the nature of the employments will permit," and yet, wherever the nature of the employment requires two persons to work together, those two persons are to have a room of suitable dimensions (as well as at least one inspector) to themselves. What is the final inference? that to the 900 lodging-rooms, there ought to be 450 working-rooms, of which no one ought to be less than twice as large as a lodging-room, and of which (to provide for employments that may require an unlimited number to work in the same room), any number may be ever so much larger. Had the authors meant a job (than

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The distinctions observed in the formation of the classes will not be altogether lost: they will serve as guides in the formation of the companies. For this purpose, two rules present themselves:—1. *Put not in the same company, corrupt and uncorrupted;* 2. *The more corrupt the individuals, the less numerous make the company.* The choice as to numbers will be in general between *four*, *three*, and *two*: these considerations may serve to determine it.

As to the principles which determined the characters of the several classes, I took them from the source that all principles are naturally taken from — common opinion and the authority of others. This in the first instance: but for a definitive choice, I have done by them as I do by all principles, as far as time and faculties permit—I have subjected them to the test of utility. The bulk of them have stood this test; others have given way. The distinction between old offenders and raw offenders amongst males, and that between the dissolute and the decent among females, are in the former case: that between the daring and the quiet among males is in the latter.

As to the two distinctions adopted, I shall leave them on the same basis of common opinion on which I found them.

The other being rejected, something in the way of reason may be expected to account for the rejection. This reason will not be long to seek. *Quiet* or *daring* is a distinction that respects safe custody and obedience. But in a prison thus guarded, and under a government thus armed, the importance of this distinction vanishes altogether. From four — no, nor from four hundred, were they all loose together, and all Herculeses, could such an establishment have anything to fear: entrenched behind the surrounding wall — armed and invisible against the defenceless and exposed, a single female might bid defiance to the whole throng. The least number of rulers that could possibly be made to suffice for inspection and instruction, would be amply sufficient for mastery. As to obedience, it follows in the most perfect degree from the inability to hurt, the exposure to chastisement, and the absolute dependence in respect of the means of sustenance. In a situation like this, the distinction between the quiet and the daring is therefore obliterated, the most transcendent audacity being cut down to the scantling of quietness.

What misled me was the apprehension manifested in the common plans with regard to nocturnal escapes, and the anxiety not to suffer even two to be together during the night, notwithstanding the almost promiscuous association admitted of in the day. If, then, escape and rebellion, said I, are so much to be apprehended, the more daring the character of those who are left together, the greater the cause for apprehension; and if the quiet are left with the daring, the daring may corrupt them, and make them like themselves. True; but a number of men in whom the obnoxious quality is already in full vigour will be still more formidable than an equal number in a part of whom only it hath as yet taken place. Whatever, then, be the reason for separating the quiet from the daring, the reason is still stronger for separating the daring from each other. But in a place like this, audacity, be there more or less of it, must in any case be equally without effect. The distinction, therefore, is in every point of view of no use.

How different the case in the common plans of penitentiary management! Each cell is in its interior out of view of everything. Even supposing every prisoner separate, what turnkey or taskmaster could be sure of being an overmatch for each of them, and not only an overmatch at the long run, but secure against assault in the first instance? Suppose the prisoners in pairs, what two, or even what three, of their rulers, could look upon themselves as out of the reach of danger? Any man who has no regard for his own life is master of another's. In this state of desperation, which unhappily is not without example, a few prisoners might be enough to clear a common prison of its rulers.

Housebreakers seemed to be the sort of criminals from whom, on every score, the worst was to be apprehended. They would naturally be among the most daring; they would be amongst the most skilful and experienced in mischief of all kinds, and in contrivances for escape. True; and the more formidable when single, the more dangerous, were there any danger in the case, if left in the company of each other. But what becomes of danger, from the most audacious and most skilful, even of housebreakers, where there is nothing to favour escape, and every thing to render it impossible?

Having brought the plan of seclusion thus far on in its way to perfection, let us see how far, and in what respects, it still falls short of the mark. Not far, I hope; nor will the distance afford an objection, if it be seen that a nearer approach would be impossible.

One cause of imperfection is, that among

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which it is certain nothing was ever farther from men's thoughts,) what could a favoured architect have wished for more?

On such a plan, one of two things must at any rate take place: association in crowds (whence a total departure from the professed design,) or buildings upon buildings to prevent it. The probability is, that both should exist together—the evil of the mischief, and the evil of the expensive and inefficacious remedy. The first is indeed a necessary consequence of the other parts of the plan; and the other, to a greater or less degree, is more than probable.

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any two of the most experienced in mischief, neither perhaps, but might still find some new lesson of mischief to learn of the others. The tracts in which their experiences have respectively run, may happen to have been more or less different. Therefore, though but two of this description were left together, and the plan of mitigated seclusion by division into companies carried to its utmost; still it is not carried so far as could be wished.

Another is, the difficulty that may attend the ascertaining the character of the individual, and consequently the determination of the class to which he ought to be referred.

To the first objection, the answer is short. If this degree of seclusion be not sufficient, there is nothing beyond but absolute solitude. But the ineligibility of that plan has, I hope, been sufficiently made out.* Evil of absolute solitude is certain—it is immediate—it is intolerable—it is universal. Evil resulting from an association thus strictly limited is but contingent—it is remote—it is far from universal;—at the worst, it is not great. What does it amount to? that one of them may suggest to the other some trick he was not as yet master of. What if now and then such a thing should happen? Whatever communications are made in this way will be soon made; and the time in which it would be possible to turn them to account in the way of practice will not come for years. But of this enough has been said already.†

So much as to the suggestion of the *means* of mischief. Is the suggestion of *incentives* any more to be apprehended?—a material question; for if the propensity be out of the way, expedients and contrivances will die away of themselves. What should the corrupter insinuate? That there is no danger in guilt?—but the assertion is anticipated and disproved by the very fact of their being *there*. That there is pleasure in guilt?—but the pleasure is dead and gone: the punishment, that has sprung out of its ashes, is present in every tense; in memory, in sufferance, and in prospect. That shame does not flow from guilt?—they are steeped in it up to the lips: they have a scornful world to gaze at them, and each, but one, two, or at most three companions, to keep him in countenance.

What other corruptive theme should come upon the carpet? Debauchery?—it is not practicable; no, not in any shape: checks unsurmountable; instruments and incentives none.

Profaneness?—nor that neither. Profaneness has clamour for its natural associate: separated from this concomitant, it loses its zest. Clamour they are absolutely debarred from: instant punishment would follow it. But who ever whispers an execration, or a profane oath? What is an execration? what is a profane oath? Morally speaking, a mere vulgar expression of anger, or an abjuration of restraint.‡ But is this a place where anger can be gratified or find vent?—is this a place where restraint can be thrown off? To check swearing, is to check anger and audacity; and to check anger and audacity, is to check swearing. To apparent submissiveness they will be forced; and, after a time, from apparent submission, real will ensue. Men become at length what they are forced to seem to be: propensities suppressed are weakened and by long-continued suppression killed.

A more consolatory, a more inviting, and, as it should seem, a much more natural topic of conversation, is the melioration of their lot, present and future: how they shall earn most by their work, and what they shall do with what they earn, now that they can do nothing but work, and that dissipation in every shape is impossible, and all means of it out of reach: how to make the best of their present situation while it lasts: how to employ the distant, though longed-for period of their release, in such projects of productive industry and innocent enjoyment, as their recovered liberty will allow of, and as it would be among the objects of a good plan of management to hold up to them and to facilitate. To be engrossed by the present moment is among the characteristics of that lowest class of individuals, among whom the species of guilt which lead to this mode of punishment are most apt to be found: it is in a more especial manner the character of such of them as have actually fallen into those snares. The force, as well as evil effects of this propensity, stand demonstrated by the very act by which they fell: being in one instance so powerful, is it rational, then, to conclude that in another it will be of no effect? Where a cause is one and the same, some degree of uniformity cannot but be looked for in its force: where its effects happen to be on the evil side, they ought to be looked out for, and provided against; but neither are the good, merely because they happen to be good, to be thrown out of the account, and regarded as impossible. No—as it was the interest of the moment that ruled him in the one case, so will it in the other. When that irresistible prompter beckoned him into the track of guilt, he fell into delinquency: now that, with a much steadier

* See Part I. Section 6. † Ibid.

‡ A kind of interjection. As there are interjections of grief and of surprise, so there are interjections of anger and audacity: and these interjections are what are called *oaths*, and so forth. This observation, while it places the moral mischievousness of an expression of this cast in a somewhat new, and perhaps not uninstructive point of view, shows what ground there is for making them the objects of prohibition and temporal punishment, more especially in such a place.

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finger, it points to the paths of innocence, he will confine himself to those paths.

Reformation, therefore, mutual reformation, seems in such a state of things happily much more probable than increased corruption, even among those who are already the most corrupt and hardened.

This nearer and less gloomy view of the probable future, I would wish to recommend to the attention of those desponding moralists, who, led away by general and hasty conceptions, look upon the reformation of a thorough-bred London felon as an object altogether hopeless. Had delinquents of this description been frequently seen under such a course of discipline, and the result had been thus unfavourable, the despondency would have ground to stand upon. But in what instance has an engine of anything like such power ever yet shown itself to human eyes?

Should seclusion, pushed to the very verge of absolute solitude, not yet promise enough, will *colonization* promise more? Turn to New South Wales: 2000 convicts of both sexes, and 160 soldiers (not to speak of officers,) jumbled together in one mass, and mingling like beasts: in two years, from fourteen marriages, eighty-seven births; the morals of Otaheite introduced into New Holland by the medium of Old England.*

SECTION V.

EMPLOYMENT.

1. Of what nature shall be the employments carried on in this house? of what *quality*, in consequence, the labour exacted of the prisoners?

2. In what *quantity* shall that labour be?

3. How much within the day? how many, and what *working hours?*

4. Any more at one *season* than another? and if so, at what season?

5. Any difference according to *length of standing?* i. e. according to the share which has elapsed of each man's respective term?

To each of these questions I will endeavour to find some answer: not surely in every instance with the view of fettering my contractor; nor in any instance is it for his sake that I should think of encroaching upon his free-will: but it will do him no harm at least to hear what I have to say to him in the way of suggestion or advice. Beyond advice I should never think of going with him in that view, though I were armed with all the powers of law; since the more incontestible the goodness of the advice, in the shape of advice, the more palpable the inutility of it in the shape of obligation.

Of these five rules, the third, fourth, and fifth, are inserted here principally in deference to the penitentiary act; the fifth, in particular, is one which would never, I confess, have gained entrance into my imagination, but through the medium of that statute.

I. Of what quality? To that question I must give three answers:—

1. The most lucrative (saving the regard due to health) that can be found.

2. Not one only, but two at least in alternation, and that in the course of the same day.

3. Among employments equally lucrative, sedentary are preferable to laborious.

1. What, then, are the most lucrative, will it be asked? Who can say?—least of anybody, the legislator. Sometimes one sort, sometimes another. No one sort can possibly, unless by dint of secresy or legal monopoly, stand in that predicament for ever. But there are those which are essentially disqualified from ever standing in it: they are those, as we shall see, which stand foremost on the list recommended by the penitentiary act.

2. Thus far, however, may be answered in the first instance: No *one* sort at any time; two at least should succeed one another in the course of the same day. Why? because no one sort will answer all the conditions requisite. Health must never be neglected. The great division is into *sedentary* and *laborious*. Consult health: a sedentary employment must be sweetened every now and then by air and exercise—a laborious employment by relaxation. But exercise is not the less serviceable to health for ministering to profit; nor does relaxation mean inaction: when inaction is necessary, sleep is the resource; a sedentary employment is itself relaxation with regard to a laborious one. And though the body should even be in a state of perfect rest, that need not be the case with the mind. When a man has worked as long as without danger to health he can do at a sedentary employment, he may therefore add to his working time, by betaking himself to a laborious one: when a man has worked as long as without pain and hardship he can do at a laborious employment, he may work longer by changing it for a sedentary one. No one employment can therefore be so profitable by itself, as it might be rendered by the addition of another. *Mixture of employments*, then, would be one great improvement in the economy of a prison.

In the mixture thus made, which of the ingredients, supposing them on a par with respect to profit, ought on other accounts to predominate? The sedentary: and that upon two grounds—*economy* and *peace*. The

* See Governor Philip's Account of the Settlement, 4to, 1791, R. p. viii. 67; Mr. White's ditto, 4to, 1790; and Extracts of Letters and Accounts printed and laid before the House of Commons, in pursuance of an order of April 8th, 1791, p. 3.

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harder the labour, the more in quantity, and the more nourishing in quality, the food requisite to enable a man to go through with it. At the same time, the higher fed a man in such a situation is, the more robust and formidable he will be in case of his becoming refractory, and the more likely to become so. Among men in general, but more particularly among men of a description so untamed, a daring temper is the natural concomitant of a robust frame. A blacksmith or sawyer will naturally require more food, and that of a more substantial kind, than a weaver, a stay-maker, or a tailor. This latter consideration, it is true, refers only to the common plans: in a Panopticon, be the prisoners well or ill fed, strong or weak, the peace of the house is equally secure.*

Mixture ministers to economy in other ways: it helps quantity, it improves quality. By variety it renders each less irksome; but the less irksome a man's work is to him, the more as well as the better he will work.

Could a man be made even to find amusement in his work, why should not he? and what should hinder him? Are not most female amusements works?—are not all manly exercises hard labour?†

II. How much in *quantity?* — Of course, as much as can be extracted from each without prejudice to health. The question is already put — the answer already given: it is given by the rule of economy — it is given by the rule of severity; nor is there anything in the rule of lenity to contradict it.

III. What, then, should be the *working hours?* As many of the four and twenty as the demand for meals and sleep leave unengaged.

Would the number be too great to be spent in an employment of the laborious class? Give the surplus to a sedentary one. Suppose, then, two employments of the different classes equally productive, and that the laborious one is too fatiguing to be continued during half the number of the working hours, what is to be done? Take away from this employment hour after hour, and transfer them to the unlaborious one: do this, till there remains no more of the former than a man can fill up in that manner, without being debarred by the fatigue from bestowing the whole remainder of the disposable time on the sedentary employment.

To what imaginable good purpose, even in the way of amusement, could so much as a moment of absolute inaction serve? — to conversation? But what should hinder their talking from morning till night, if they are disposed for it? Not meals, certainly; no, nor work neither: few laborious employments exclude conversation, and scarce any sedentary ones.

IV. More hours at one *season* than another? —Another question already answered; and answered in the negative. In all seasons as much as may be; therefore at no season more or less than at another. Less of the laborious, perhaps, at one time than another; viz. less now and then, when the heat of the weather is such as to render the laborious employment too fatiguing: but then so much the more of the sedentary. Now and then, the heat may be so great, for a part of the twenty-four hours, that almost any sort of bodily exertion would be hardship. Be it so: but if this can happen at any time, it is only by accident—it is not the effect of the season, but the event of the day; and though the body rest, it is no reason why the mind should lie in waste. Though it be too hot, for instance, to weave, it will hardly be too hot to write, to read, or hear a lesson.

V. Fewer hours, or less work done in the time, at one degree of *standing* in the prison

* I forget what little tyrant it was of Greece, whose policy we are told it was, in the view of keeping his subjects quiet, to encourage them to betake themselves to unathletic occupations—in the language of the good old cut-throat morality, effeminate ones. I have taken a leaf, I confess, out of that tyrant's book; the application I make of it will not, I hope, be charged with tyranny.

In my humble way of thinking, the facility of stifling dispositions unfavourable to security is preferable to the glory of subduing them, or the necessity of punishing them.

Among laborious employments, the greater part arm the body—all arm the mind. Why give any unnecessary increase to the force which it is your great study to keep in subjection? The more active, the stronger; and the stronger, the more ungovernable. Vigour and courage in a felon constitute the danger and the weakness, as in the good citizen they do the strength and security, of the state.

All this, be it once more observed, regards the common plans merely. In a panopticon I should not care how robust my prisoners were; nor even how they were armed, so it were not with fire-arms. In a common penitentiary-house, in the sort of prison built by the penitentiary act, the difference is no trifle. There they are to be in crowds: a single turnkey or taskmaster to watch over them: he inclosed in the same room with them, and without anything to keep them at a distance: they furnished with tools and materials for hard work, convertible into weapons of offence: the room closed and screened from view like other rooms: assistance out of view and out of reach.

† It is an observation made somewhere, I think, by Locke, in his book on Education, that for children amusement is to be obtained not less effectually from cheap and profitable occupations, than from unprofitable and expensive ones. A recommendation he accordingly gives is, to make a point on all occasions of giving to employments of the former description the preference over those of the latter. If the propriety of the preference is indisputable with regard to youthful innocence, how much more palpably so in the case of malefactors, whose occupations are to be allotted to them in the way of punishment for their crimes?

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than at another? — Why should there? or, consistently with the rules already laid down, can there be? At every period, as much work as can be obtained — as great a part of the twenty-fours employed in work, as, consistently with the above limitation, can be; therefore, in every part the same.

Thus says plain humble economy: what says the penitentiary act? We shall see. The first thing it does is to set out with a wrong object — labour for labour's sake. Had economy been the mark, the demands of lenity, as well as of due severity, might have been all along satisfied with little trouble, and without any expense. Abandoning the first, it attains neither of the other two; aiming sometimes at the second, sometimes at the third, it attains neither: vast expense in straining the discipline, and it is inordinately relaxed; vast expense in relaxing it, and it is intolerably severe.

At the first step, economy is kicked out of doors. Two classes of prisoners — two classes of employments; one requiring the most violent exertions — the other, none. Whether a prisoner shall be put to the one or to the other is to depend — upon what? The money to be earned? No; but upon "age, sex, health, and ability;" — age, sex, health, and ability, and nothing else. What is the professed object? — profit? No: *Hardness, servility, drudgery* — and there it ends. "Every" prisoner is to be "kept" — yes, *every* prisoner — so far as is consistent with — "sex, age, health, and ability, to labour of the hardest and most servile kind, in which drudgery is chiefly required;" — such as "treading in a wheel, drawing in a capstern," and so forth; "and those of less health and ability, regard being also had to age and sex, in picking oakum, weaving, spinning, knitting, or any other less laborious employment," [§ 33.] How many, then, are to be employed in the sedentary sort of employments? — as many as can be employed to greater advantage than in the other? No; but those, and those only, to whom, for want of health and ability, the "hard," and "servile," and "drudging" work cannot be given. No picking, no weaving, no spinning, no knitting, though orders came without number for that sort of work, and not one for the labour of the capstern or the wheel. It is to be a mere Catherine wheel, or an Ixion's wheel — a mere engine of punishment, and nothing else. Two modes of employment present themselves: the first as hard work again as the second — the second as profitable again as the first; the individual equally free for either. What can be done? Either the unprofitable one must be given him, and the profitable one rejected, or the principle of the act departed from, and its injunctions flatly disobeyed.

We are told somewhere towards the close of Sully's Memoirs, that for some time after the decease of that great and honest minister, certain high mounts were to be seen at no great distance from his house. These mounts were so many monuments of his charity; for those of his economy stood upon very different and more public ground. The poor in his neighbourhood happened to have industry to spare, and the best employment he could find for it was, to remove dirt from the place where it lay, to another where it was of no use.

By the mere force of innate genius, and without having ever put himself to school to learn economy of a French minister, a plain English jailor, whom Howard met with, was seen practising this revived species of pyramid architecture in miniature. He had got a parcel of stones together, shot them down at one end of his yard, and set the prisoners to lug them to the other: the task achieved, "Now," says he, "you may fetch them back again." Being asked what was the object of this industry, his answer was — "To plague the prisoners." This history is a parable — this governor the type of our legislator. Ask him, "What is work good for?" answer — "To plague prisoners?"*

We have seen the *constant* benefit of *alternation*. What says the act? Laborious with laborious, sedentary with sedentary, if you please. Sedentary with laborious? Yes; if you can make a prisoner go backwards and forwards from constitution to constitution, from sex to sex, and from age to age. We have seen the *occasional* benefit of *change*: what latitude does the act allow on this head? The same. Should a greedy governor attempt in either way to smuggle economy into the house, the rigid hand of a committee-man, or an inspector, or a visiting justice, might pull him by the sleeve and say to him, "Sir, this must not be; it is contrary to law. You may put those of the one class to tread in a wheel, draw in a capstern, saw stone, polish marble, beat hemp, rasp logwood, chop rags, or make cordage, as you please; you may set the others to pick oakum, weave sacks, spin yarn, or knit nets: but know, sir, that by him who is for the capstern or the wheel, no nets are to be knit, yarn to be spun, sacks to be woven, or oakum to be picked. When the capstern heaver has hoven till he can heave no more, he is to sit, lie, or stand still and lounge: when he who has been picking oakum is in want of air and exercise, he may go and take a walk, provided his walking hour be come, and that no other use be made of it. And mind, sir, that a man of the wheel-walking cast be not turned

* Howard on Lazarettos, p. 147. — I beg the jailor's pardon: what is above was from memory: his contrivance was the setting them to saw wood with a blunt saw, made blunt on purpose. The removers of mounts were a committee of justices.

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over to oakum-picking — although all the wheels should be engaged, or although there should be a demand more than can be supplied, for the oakum, and none for the labour of the wheel. For know, sir, that we are in Hindostan — Bramah has spoken — the castes must not be confounded."

"Imagination! imagination! — as if there were a magistrate in the kingdom that could hold such language." O yes, many: patience, and we shall see. Meantime, does not the act say all this? What does it say then? What is the object of the clause, or what the use of it?

What is at the bottom of this predilection for hard labour? Sound. The labour is *made* hard, that it may be *called hard;* and it is called *hard*, that it may be frightful, for fear men should fall in love with it. *Hard labour* was the original object. The error is no new one: sentences of commitment to hard labour are as frequent in our penal code as the execution of them has been rare. It is no peculiar one: it is to be found upon the continent as well as here. Dutch *rasp-house* — Flemish *maison de force* — everything impressed the mind with the idea of hard labour. *House of hard labour* was accordingly the original name. *House of hard labour*, it was suggested by somebody, is a name by which no house will ever be called, and the well-imagined word *penitentiary-house* was put in its stead. But though the name was laid aside, the impression which had suggested that name remained in force.

The policy of thus giving a bad name to industry, the parent of wealth and population, and setting it up as a scarecrow to frighten criminals with, is what I must confess I cannot enter into the spirit of. I can see no use in making it either odious or infamous. I see little danger of a man's liking work of any kind too well; nor if by mischance it should fail of providing him in suffering enough, do I see the smallest difficulty of adding to the hardness of his lot, and that without any addition to the hardness of his labour. Do we want a bugbear? Poor indeed must be our invention, if we can find nothing that will serve but industry? Is coarse diet nothing? is confinement — is loss of liberty in every shape — nothing? To me it would seem but so much the better, if a man could be taught to love labour, instead of being taught to loath it. Occupation, instead of the prisoners' scourge, should be called, and should be made as much as possible, a cordial to him. It is in itself sweet, in comparison of forced idleness; and the produce of it will give it a double savour. The mere exertion, the mere naked energy, is amusement, where looser ones are not to be found. Take it in either point of view, industry is a blessing: why paint it as a curse?*

Hard labour? labour harder than ordinary, in a prison? Not only it has no business there, but a prison is the only place in which it is not to be had. Is it exertion that you want? violent exertion? Reward, not punishment, is the office you must apply to. Compulsion and slavery must, in a race like this, be ever an unequal match for encouragement and liberty; and the rougher the ground, the more unequal. By what contrivance could any man be made to do in a jail, the work that any common coal-heaver will do when at large? By what compulsion could a porter be made to carry the burthen which he would carry with pleasure for half a crown? He would pretend to sink under it: and how could you detect him? Perhaps he *would* sink under it — so much does the body depend upon the mind. By what threats could you make a man walk four hundred miles, as Powell did, in six days? Give up, then, the passion for penitentiary hard labour, and, among employments not unhealthy, put up with whatever is most productive.

It is to this grim phantom of hard labour that economy, however, is sacrificed in a thousand shapes. Trades fixed, though they should be losing ones: working-hours—half, as we shall see, struck off at one stroke; then a considerable share of the remaining pittance; then again a double share: laborious employments prescribed, to the exclusion of sedentary ones; employments which demand much food, to the exclusion of those which require but little: and after all these sacrifices, and all this regulation, more regulation added, by which it is made impossible, as we shall see, to have hard labour as hard here as elsewhere.

As to the general complexion of the employment, the act, as we have seen, is peremptory: as to the particular species, it contents itself with recommendation. But even recommendation had much better have been let alone. Bad or good, a recommendation in such a matter has no business in a law: bad, it is pernicious; good, it is unnecessary. Is an act of parliament a place to say to a man, "Sir, here is a trade which will answer your purpose?"

Good when given, it will be bad soon after. Two things, and two things only — a secret and a monopoly—can give to any sort of trade a permanent superiority of advantage. Bad? it is positively pernicious — it is not simply

* The Chevalier Paulet's views on this head suit better, I must confess, with mine. In his establishment, a capital article in the penal list is the punishment of forced idleness; and without dividing his boys for the purpose into two classes and three classes, or plaguing his managers with governing committees, he contrives to render it sufficiently uncomfortable. See an interesting account of the establishment of that generous and intelligent philanthropist in the Repository, Vol. I.

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useless. Recommendation falling from such a height acquires force, and has the effect of a command. We shall see it has. Unfortunately, the recommendations given here are not only bad in the details, but bad in principle: bad in principle, by assuming that human force, when separated from human reason, is capable of being made use of to advantage; bad in detail, by exhibiting among the modes of giving application to human force, some that are peculiarly disadvantageous.

In the first place, bad in principle. There are two modes of applying human labour: one is where the task of *generating* the force and that of giving *direction* to it, are the work of the same man; as in common sawing performed by hand, or turning in a foot lathe: the other is, where the task of *production* is performed by one man, and that of *direction* by another; as in a turning lathe turned by a detached wheel. In the latter way, human labour, when employed for the mere purpose of labour, can never be employed to advantage upon a large scale. Why? because, not to mention wind, water, and steam, there are always animals to be found, any one of which may be made to generate more force than many men, without costing so much to keep as one. If, then, all the brute force you want is no more than what a single man is enough to generate, human labour may so far be employed in that way to advantage; for you cannot have a beast to work without employing a human creature, a boy at least, to keep it to its work.* But if the quantity of force you want is anything above what one man can generate and keep up for a sufficient length of time, to employ human force in that brute way, can never answer: an old blind horse, an ox, perhaps even an ass, will turn a wheel, a little boy will serve for driving, and the keep of beast and boy together will perhaps not exceed the keep of one man, certainly not equal that of two.†

The elementary *primum-mobiles*, wind, water, steam, wherever they can be applied, are applied, as being cheaper, in preference even to the animal: still cheaper of course they must be than that which consists of human labour.‡

"But do not you yourself make this use of human labour? do not you employ in this way, not one, not two of your prisoners, but the whole number?" Yes; that I do: but why? because I get it for nothing; which is still less than what the boy and the ass would cost me. I can undersell the broom-maker,

* The instance of a *turnspit dog* is an exception: but the force that can be generated in that way is but small, and that for no long continuance.

Could an *elephant* be made to tread in a wheel in the same manner? If he could, here would be a source of mechanical power not to be despised in Hindostan: whether it could ever be worth while in an economical view to keep an animal of this sort merely for that purpose, is another consideration. But wherever elephants are kept already, either for military purposes or for show, their labour, could it be employed in this way at all, might be employed to very considerable advantage. If, at twice or thrice, an elephant could be made to walk in this way to the amount of six hours in a day, three elephants relieving one another would keep up a fund of motion that would last 18 hours out of the 24, which is more than the usual number of working hours in a day: four elephants would keep up a perpetual motion. Speaking from the moment (for reflection and research on such an occasion will hardly be expected) there are few wind-mills or water-mills, I should suppose, that occupy so great a force. In a wheel of a size sufficient to admit an animal of this bulk, the acclivity would be very gradual; and the height would be such as would admit of a rider, if necessary, without difficulty. The form as well as manners of the animal seem to render it at least as fit for this sort of service as a turnspit dog; much more so than any of the common beasts of draught: though even these, could they be made to work at all in this way, might perhaps in this way be worked to more advantage, than by drawing.

Where they are kept for military purposes, the profit that might thus be made of their labour in time of peace might thus pay for the heavy expense of their maintenance in time of actual service. Even where they are kept merely for state, reasons for employing them in this manner would not be wanting. It would be a means of preserving their health, which otherwise may be soon destroyed, and the life of the animal cut short for want of exercise. Several animals of this sort have been imported into this country in the course of the present reign. Two at a time I remember seeing at the Queen's house. The uncomfortable state in which they were kept, debarred from all exercise, and confined to a small stable, where they had scarcely room to turn, or even stand at their ease, soon proved fatal to these noble quadrupeds, whose lives nature had designed to emulate in duration those of the first patriarchs among men.

† Nor yet can it answer to employ a man for generating force, but upon the supposition that the whole quantity of the commodity capable of finding a market is no more than what the brute force generated by two men is able to produce. Suppose it equal to the force of three men, one man to give direction to the force, with a beast, and a boy to drive it, could afford the commodity so much cheaper as to break the other two, with their respective *directing* partners.

‡ In the economy of mechanical operations, one of the most fertile sources of improvement is the separating the art of giving direction to force, from the labour of generating it. Great is the advantage that may be made in this way, even where this latter operation is left to man: much greater of course where it is turned over to more proper agents. A single man, or in many instances a single child, and that a very young one, may find direction for a very powerful machine, or a very numerous assemblage of less powerful ones: instance—the spinning-machines, and the various other engines employed in the manufactories of the different sorts of cloths.

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who stole the sticks: I steal my brooms ready made. The labour I employ in this way, I steal the whole of it from idleness. The same labour does the business of health and economy at the same time. My prisoners, if they did not walk in a wheel, must, like other prisoners, walk out of a wheel: and, in the latter case, the same degree of exercise would require more time spent in walking, than in the former.

Inexpediency in detail is another property of these imperious recommendations. For instances of laborious employments, eight sorts of operations are promiscuously brought together: "Treading in a wheel, or drawing in a capstern for turning a mill or other engine, sawing stone, polishing marble, beating hemp, rasping logwood, chopping rags, and making cordage."

What are we to understand from this heterogeneous specification? In the two first instances, the only thing mentioned is the mode of *generating* the force: in the other six, the *direction* to be given to it, the application to be made of it. Is it that the force generated, as in the two first instances, is meant to be applied to produce the effects respectively specified in the other six? Hardly. Sawing stone and polishing marble, I am assured, are operations that have never yet been performed any otherwise than *by hand*. Beating hemp and rasping logwood are performed thriftily by wind and water; unthriftily here and there perhaps by hand: hemp-beating, especially, so unthriftily as to be banished from all free manufactories, and confined to prisons, where its sole use is, like that of the blunt saw, to plague those who work with it. Chopping rags is performed, at all paper-mills I ever saw or heard of, by the force of that element, an abundant supply of which is essential to the manufacture. Was a business like this ever performed by a mill or other engine moved by a walking-wheel or capstern? I must have good proof of it before I believe it. My conclusion is, that in the recommendation of the wheel and the capstern "for turning a mill or other engine," the views of the legislator had not got the length of pitching upon any particular sort of work to be performed by the mill or other engine—that the operations mentioned immediately afterwards were not meant as instances of work to be performed by such means; but that the intention was, that they should all of them be performed by hand. If so, two different misrecommendations are enveloped in this one clause. One is, the employing of human labour for the generation of brute force, in preference to the elementary and other irrational agents: the other is, the performing by hand a variety of operations, not only to the neglect of the most advantageous methods of employing machinery, but to the neglect of those very methods which itself has been pointing out.

As to the making of cordage, the ineligibility of such an employment for such a place has been pretty fully shown above.* Immense space—that space inclosed at an immense expense, which, be it ever so immense, will hardly be sufficient—and all this to carry on a manufactory of implements of escape.

The strangest recommendation is that which is intimated by the placing the labour of the wheel and that of the capstern on the same line, as if indifferently applicable to the same purposes. The first is of all the known modes of generating pure force by human exertion the most advantageous: the other, unless in very particular circumstances, perhaps the least so. In the place in question, these circumstances are never to be found. Compared with a perpendicular wheel, the sort of horizontal wheel called a capstern would, in such a place, be a miserable contrivance. The most painful and intolerable muscular contraction will not produce, in the latter way, a quantity of force approaching to that which is produced by the successive application of the weight of the body in the mere act of walking in the other. The capstern-heaver would be dead before the wheel-walker felt the sensation of fatigue.† The advantage of that horizontal wheel is, that you can put more men by far to it than you can put to the perpendicular one: you can lengthen the levers; you can multiply them to a great degree; you could even put story of them over story. Hence it is of use where, having plenty of men, who if not employed in this way could not be employed at all, you want now and then a heavy lot of work done in a short time. Such is the case in seamanship. Accordingly, in seamanship the capstern is made use of with great advantage—in heaving anchors out, in raising them, and so forth; and I question whether there be another instance.‡ Since

* Part I. Section 20.

† According to Desaguliers, the force which a man can exert in towing is upon an average equal to no more than 27lbs.; that is, a force that would serve to raise a weight to that amount; for instance so much water out of a well. But "drawing in a capstern" is towing. According to the same philosopher, 140lbs. may be reckoned the average weight of a man: with this whole force a man acts, when walking in a wheel. The principle of the walking-wheel is therefore more than 5 times as advantageous as that of the capstern.

‡ Am I right? I think I have traced the error to its source. On board the ballast lighters, the capstern was employed to raise gravel; for the captain was a seaman. Now as anchors are raised in that manner, why not gravel? On board the ballast-lighters, gravel is raised upon the capstern principle; and that surely is hard labour. But hard labour is the very thing we want, and there it is for us.

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the world began, I do believe it has never been employed to keep up a constant force.

Even laying profit out of the question, as the authors of the penitentiary act do, and setting up labour as its own end without looking for any thing beyond it, we shall find the lesson equally pregnant with delusion. Even in this point of view, nothing can be more opposite than the labour of the capstern and that of the wheel. Wheel-work is open to abuse on neither side: capstern-work, on both sides.* Laziness on the part of the workman, negligence or partiality on the part of the inspector, may reduce the exertion to nothing: tyranny may screw it up to a pitch fatal to life.

Nor is wheel-work less happily adapted to the purposes of economy in other points of view. Knowing by trial the quantity of force necessary for giving motion to your wheel, you can provide for the keeping up of that force with the utmost certainty: you can know before-hand what each man can and will do, as well as afterwards whether he has or has not done it. In this way, as no man can cheat you, nor is the quantity of work dependent at all upon good-will, slave's work is worth as much as freeman's work, neither being capable of doing more nor better than the other in the same time.†

The regulation about hours strikes me, I must confess, as a most extraordinary one. Working-hours, never more than ten out of the four-and-twenty; and, for a quarter of the year, not more than eight: eight for three months, nine for two months more, and ten for the other seven. For greater certainty, a *curfew* clause: all lights and fires out before nine. Of the quantity of labour that might be had, more than five parts out of 15 in point of *time*, as we shall see, ‡ thrown away, for the sake of getting the other nine or ten of a hard sort: and all the while, by this very limitation in point of time, matters so arranged, that it shall be not only difficult on other accounts to have the labour as hard here as elsewhere, but upon this account impossible.—This an act for the promotion of hard labour! Say rather for the prevention of it.

What a lesson to the country! That little more than half the labour the honest poor, the industrious tradesman, are forced to go through in order to live, is a lot too hard for felons! What is the tendency, not to say the fruit, of all this hard labour so unhappily bestowed in the field of legislation? to render hard labour impossible in the place it is specially destined for, and odious everywhere else.

In one circumstance of it, the regulation is a perfect riddle to me:—most work when the weather is hottest. That the number of working-hours should be made variable according to the heat of the weather, how little necessary soever as we have seen, was, however, natural enough; but the principle by which the variation is determined seems a perfect paradox. When was the number to be the greatest?—when the season was hot-

* Wheel-work is mere foot exercise: capstern work is arm exercise. In the former, the effect is the immediate result of muscular exertion, and proportioned to that exertion, be it ever so great or ever so little: in the latter, it is the result of mere weight—the weight of the body successively applied to the different parts of the circumference of a wheel; and so long as the same pace is kept up, that weight, as well as the exertion by which it is applied, is invariably the same.

In the wheel-work, if there were twenty men in a wheel, you would know exactly what each man's exertion was, and what the share it had in the production of the common effect: in the capstern-work, though there were but two men, you could not ascertain either man's share.

† Could not a man cheat, it may be said, by setting his foot down on the same spot from which he took it up, or even backward instead of forward? I should doubt it: and if it were feasible, an effectual remedy might be found. Even in a single wheel (I mean a wheel with a single man in it) the *impetus* already acquired by a few turns would make it much easier to a man to go on, than to step backward, or in the same place: much more in a double wheel, especially if the deceit were practised by one alone without the concurrence of the other. In the only walking wheel I ever saw (which was made for a carriage to go without horses) there were steps in the inside for the convenience of treading. These would serve likewise to render deceit more difficult, as well as to maintain regularity in the pace. But deceit might at any rate be prevented, especially with the help of these treading-boards, by prescribing the number of steps to be taken within a certain time: a small index-wheel connected with the main wheel, as in the instrument called a *way-wiser* for measuring ground, would serve to show with the utmost exactness how far the injunction had been observed.

In some instances, the quantity of the *effect* produced might be made to show the number of turns that had been given to the wheel: for example, in raising water, the quantity of water that had been raised. But this depends upon the nature of the work, and the instances in which it would hold good are comparatively but few. The index-wheel (which of course must be situated in such a manner as to be out of the reach of having its indications falsified by the labourers in the wheel) is therefore the preferable resource.

To keep the force thus gained to an equality, in any operation in regard to which the difference in point of weight between man and man were liable to produce occasional deficiencies, those whose natural weight was under the mark might carry artificial weight in proportion: and if with this addition the exercise were too much for any one, a proportionable abatement might be made to him in the article of *time*. Weight might thus be carried, not, as in the equestrian phrase *for inches*, but for lightness and for strength.

‡ See Section *Distribution of Time*.

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test—in the height of summer: when the least? when the season was coldest—in the depth of winter: in the temperate months, it was to take a middle course. What can have been the object here? In a clause in which the quantity of labour was directly and professedly limited and reduced, one should have thought, it had been lenity and indulgence. But where is the indulgence of working a man hardest when he is hottest, and giving him least work when work would be a blessing to him, to keep him from the cold?

Even the propriety of marking the temperature in this imperfect and indirect way by the season, instead of the perfect and direct way, would itself be questionable. For observe the consequence: work is to be lessened (or, as this clause will have it, increased) upon the supposition of its being sultry, when perhaps it is below temperate: work is to be increased (or, as this clause will have it, diminished) upon the supposition of its being hard weather, when perhaps it is above temperate. Whether the thermometer is between 20 and 40, or between 50 and 60, or between 60 and 80, is a fact just as easy to ascertain as whether it be January, April, or August. If the idea of regulating work by temperature is not ridiculous, it is not accuracy that will render it so. If heat and cold are to be measured, it is surely as well to do it by a right standard as by a wrong one.

But we have already seen that it is *quality* only, and not *quantity* of work, that ought to be influenced by temperature; and that neither the one nor the other ought to be regulated by law.

Eight then, and no more, is the greatest number of hours during which, in the cold season, any sort of work, sedentary or laborious, is in this establishment for hard labour to be carried on: so at least says section 34. True it is, that by section 45, a possibility is created of a prisoner's working at additional hours over and above those which have been mentioned. A possibility? Yes; and that is quite enough to say of it. A special permission must be given by the committee: it is to be given only "to the most diligent and meritorious;" only "in the way of reward or encouragement"—they may choose whether they will give it in this shape, or in that of an allowance of a part of the earnings of the stated hours: it is to be only "during the intervals of the stated labour;" not therefore in any interval between a time of labour and any other time, such as that of rest or meals: all "working tools, implements, and materials".....that "will admit of daily removal," are, by section 34, to be "removed" when the "hours of work are passed, to places proper for their safe custody, there to be kept till the hour of labour shall return;" and by section 40, "the doors of all the lodging-rooms are to be locked (with the prisoners, I suppose, in them,) and all lights therein extinguished, after the hour of nine."

A possibility (did I say?) of extra work? Yes; and what is there more? The governor, on whom it so unavoidably depends, has motives given him for thwarting it, and none for forwarding it: none for forwarding it, since the earnings at these extra-hours are to go entire to the prisoner-workmen—no part of them to him. But of the labour of the stated hours, a great part, if not the whole, is to go to him. [§ 20.] Of the hard work, which is the only sort the act allows of where hard work can be got, so much as can be got within the compass of the stated hours, he will therefore be sure to get from them: but of the only two species of labour which the act exhibits at the head of the list of specimens and patterns (treading in a wheel, and heaving at a capstern,) there is not one which it would be possible for a taskmaster to compel the continuance of, so much as during eight hours of the twenty-four, the smallest of the numbers of stated hours prescribed. Judge, then, whether he will give up any of that time which is his, in order to make *them* a present of it.*

Another anticlimax not less extraordinary is yet behind: labour made less and less, according to length of standing. When a man has served a third of his time, so much is to be struck off from his work;† when two thirds, so much more. Less and less of it there is thus to be, the more valuable it is become to everybody, the easier it sits upon himself, and the nearer he is arrived to the period when he will have that and nothing else to depend upon for his subsistence.‡

* What, then, does this clause amount to? anything or nothing? Shall we ask the Gloucester magistrates? Their decision is in the negative. Punctual copyists of the other provisions of the act, they have passed this by without notice.

† "From his confinement and labour," says the act (§ 38.)

‡ "The offenders.....shall be divided into three classes; which shall be called the *first*, *second*, and *third* class; for which purpose the time for which such offenders shall severally be committed shall be divided into three equal parts; and during the first part of the time of the imprisonment of every such offender, he or she shall be ranked in the first class, and during the second part of such time, he or she shall be ranked in the second class, and during the third and last part of such time, he or she shall be ranked in the third class; and the confinement and labour of such offenders as shall from time to time be ranked in the first class, shall be most strict and severe, and the confinement and labour of the offenders ranked in the second class, shall be more moderate, and the confinement and labour of those ranked in the third class, shall be still more *relaxed;* which several degrees of confinement and labour, so to be affixed to each class, shall from time to time be settled by the committee, by orders of regulation to be approved of in

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What is at the bottom of all this contrivance? — possibly the principle of the *blunt saw*: when prisoners require most *plaguing*, most labour is to be got out of them; when less plaguing will suffice, the superfluous labour is to be tossed by, as being of no further use. While their work is troublesome to them, and they are awkward at it, and it is worth but little, they are to be made do as much of it as they can: the more it comes to be worth, as it answers in a less degree the purpose of *plaguing* them, the less of it there is to be.

At Westminster school, the climax of instruction takes, if it is not much altered within these thirty years, a somewhat different course. Whatever be the task, the longer a boy has been about it, the greater is the quantity of it expected from him in a given time. Memory, invention, whatever be the faculty concerned, the supposition is, that it would rather be improved than impaired, fortified than debilitated, by use. If ten lines are to be got by heart for an exercise in the second form, twenty lines are to be mastered the same way in the third. If a Greek distich is to be construed and parsed in the fourth form, a tetrastich is to be discussed within the same time and in the same manner in the fifth. The supposition there evidently is, that learning is a good thing — that the more a boy can be made to imbibe of it the better — and that, in short, he could hardly have too much. That any proposition to this effect was hung up in any part of the school-room, is more than I ever heard. But if it had been, it could not have been more thoroughly recognised, nor the truth of it more steadily assumed in practice. In these new invented schools of penitence and industry, a proposition not less steadily assumed and implicitly conformed to is, that industry, that productive labour, is a bad thing — that it is fit only for punishment — that an honest man cannot have too little of it: that it is fit only for felons, and for them only while the marks of guilt are fresh upon their heads — that the less of it a man goes through, the better it is for him. Accordingly, the object of this clause is to wean him from it by degrees; regarding it as fit not for ordinary diet, but only for physic, the dose of it is lessened, in proportion as the effect with a view to which it was first administered, is supposed to be produced.

For my part, I see nothing in the principle pursued in the school of literature that should render it unfit for adoption in the school of productive industry: I can find nothing in the design of either institution that should prevent its reception in the other. But were there in this case a repugnancy that I do not see, so that all that I could obtain were the option of giving it to the one or to the other as I chose, I must confess it would be to the more humble establishment of the two that I should be disposed to give the preference. It is by reading Latin and Greek that we learn to read Greek and Latin; but it is by digging, and grinding, and weaving, that we live.

I have sometimes thought that, considering the light in which the matter seems to have been viewed, industry has been let off tolerably cheap, and that it is a happiness the divisions in this newly-devised school of industry have not been more than half the number of those in the school of literature. Had there been as many classes at Wandsworth as there are *forms* at Westminster, it would not be easy to say to what profundity of gentlemanly repose the anti-climax might have been pushed. As, in the one place, the seventh form is filled with the few whose persevering spirit enables them to tug at Hebrew roots; so, to the other, none should be admitted whose oblivion of labour had not learnt to shew itself at their finger's ends, as in China, by a seven-inch length of nail.

The stock of relaxants is not yet exhausted. When hours after hours of the working-time have been struck off, for fear the prisoners should not yet be idle enough, some of the best of them are to be picked out, their work is to be taken altogether out of their hands, and they are to be suffered to go idling about the house. By a separate section inserted for the purpose (§ 39,) the governor is empowered "to employ at his discretion any" ....." who shall be ranked in the third class, as servants, overseers, or assistants, in the management of the works, and care of their fellow-prisoners, instead of being confined to such their daily labour as aforesaid."

I say *idling;* for house-service, in comparison of a working trade, is idleness: superintendence of course, still greater idleness. A preceding clause (§ 32) took them from whatever good trades they had been bred to, to put them to a bad trade, contrived for punishment and nothing else. A part of them are now to be taken even from that bad trade. By the time their term is out, and they are to be turned loose again upon the wide world, they are to have unlearned every thing that can afford them the smallest prospect of a maintenance. For in such a place what possible provision can house-service lead to? who will take house-servants from such a house? House-service requires confidence: character is insisted on. Of handicraft trades, most require very little, some scarce any.

The clause calls itself an enabling clause. What is it? Were it any thing, it would be a restraining one. Servants — what servants worth speaking of can really be wanted in such a house? Are the prisoners to be too

manner aforesaid, but so as not to defeat or elude the special provisions made and appointed by this act."

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proud, or has the act made them too busy, to sweep out their own rooms? Could not the task of keeping clean the common rooms (since upon this plan there were to be common rooms) be performed by rotation? does it require picked men to do it? I say it is in effect a restraining clause. Supposing no such regulation, such sort of service, what little of it there is necessary, would have been performed on one or other of two plans:—either upon the rotation plan, every one doing a small share; or, were any selection made for a sort of service requiring no sort of skill, it would be of such as were awkwardest at their trades. I speak of a manager of common plain sense, who were not handcuffed, and whose profit were staked upon the success. Here he is dissuaded from the rotation plan; an establishment of servants is recommended to him; and in choosing them, he is forbidden to take them from any of the three classes but that which includes such as are expertest at their trades, as far as expertness is to be inferred from practice.

I call it, then, a restraining clause—and so it is with regard to good management and industry: for with regard to abuses and idleness, its enabling tendency is not to be denied. The objects we are most conversant with will naturally be uppermost in our thoughts. In the creation of this new microcosm, no wonder if the old and great world should sometimes have been in view. Of this chief seat of relaxation in the most relaxed of all the relaxed classes, the idea seems as if it had been taken from Lord Chesterfield's hospital of incurables: niches are accordingly left in it here and there, capable of being fitted up into little snug places and sinecures.

Of all this elaboration and complication, what, then, is the effect? Mischief—mischief in all its shapes: listlessness, idleness, incapacity of earning subsistence—mischief, and nothing else. What was the end in view? Not mischief, most assuredly. What then? In good truth, I do not know. Punishment is one use it is applied to, and that the only use. By § 47, powers of punishment are provided, and that of "removing such offenders, if ranked in the second or third class, into any prior class," is of the number. What then? This delicate piece of mechanism, with all its softness, and smoothness, and relaxation, is it after all but an engine of punishment? An excellent one it would be, were it as good as it is expensive. Perillus's bull, had it been of gold instead of brass, would scarce have equalled it.*

This reason, such as it is, makes bad still worse: complication and obscurity, and that

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* Calculation of the expense of this engine of punishment, for 900 prisoners, being the number provided for by the Act:—

Suppose gross average value of each prisoner's work for a day, ...	£0	0	3
This makes for a week, ...	0	1	6
For a year, ...	3	18	0

Proportion to be struck off from the labour of each prisoner upon his removal from the first class to the second, one hour out of nine, the average number of hours, I set at one-ninth: and a manager would hardly think of striking off less than this, if he struck off anything.

Additional deduction on the removal from the second to the third—one ninth *more*.

Result.—Gross annual value of the labour of 900 prisoners, without the deduction in question, ...	£3510
Ditto of one-third of the number, viz. 300, being the number in the second class,	1501
Deduct one-ninth from the total value of the labour of this second class, ...	130
Ditto two-ninths from that of the third class,	260
Total deduction, . .	£390
Present value of such annual deduction, considered as a perpetual rent-charge at 30 years' purchase, ...	£11,700

I think I shall not be accused of having rated the value of the labour extravagantly high at 3d. a-day, considering that it is but the gross value, and that it takes the economy at the highest pitch to which it can be pushed, not only by this act, but by the accumulating powers of a series of acts explanatory and emendatory upon the same principles to the end of time. I say, then, that for £11,700, not a Perillus only, but even an ordinary goldsmith of the present degenerate age, could make a very decent bull, big enough to broil a middle-sized man in, of the very best gold. I mean, provided he were allowed to take his own way for making it; for I would not answer for him were he to be obliged to learn his art, like the manager of this manufacturing concern, from instructions beat into him by act of parliament, nor if the thickness of the gold were to be regulated upon the same principles as the dimensions of the houses in the penitentiary-town are by this Act.

Whether the deduction was meant to be made in the article of *time*, or in the article of *exertion*, it comes to the same thing. It must have been in one or other; for it is not "*confinement*" only that is to be first "more moderate," then "still more relaxed," but "*labour*." Time was the element best adapted to calculation, as being the only one of the two that was susceptible of a determinate shape. If the act meant not *time*, but degree of *exertion*, it did still worse; for that would be giving the powers most arbitrary form. The intention could hardly be, that the relaxation should be administered by change of trade: the economy would be still worse. Is the new trade a less productive one than the old one? Here is loss, then, incurred to no purpose. Is it more productive? Still the same loss; only precedent, instead of subsequent—a bad trade carried on for a whole year for the sake of changing it for a better at the year's end. Is it neither more nor less productive? Still there is loss; for by the supposition, in the second trade there is to be the same produce with less labour. With equal labour it would, therefore, have been more productive than the first: it ought, therefore, to have been taken up from the beginning, instead of the first. Add to this, in every case, the loss that must result from the time consumed in learning a new trade.

Another mischief: Not only the *labour* is thus

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complication a cover for tyranny and injustice. The meaning, if I do not misunderstand it, was, that for a prison-offence, the committee should have the power of adding to any prisoner's term of confinement an additional one, ever so short or ever so long, so as it did not exceed the original one. In that case, the simple course would have been to have said so. Instead of that, the meaning is expressed in a round-about way by reference to these classes. What is the consequence? That when six years, for instance, was the term for the original offence, for the prison-offence you can have nothing less than two years; nor if you would have more than two years, anything less than four years: two years or four years, then, with an additional time, such as the committee may think proper to add to it, is the only alternative: two years the least quantity in such a case; or else this precious engine, which it cost so many thousand pounds to make, is not to be used; if you won't use it harshly, you shan't use it at all: so says the letter at least of this law.*

The necessity, howsoever it might sit upon the prisoners, would not sit very heavy upon the governor: I mean, if he has in effect that interest in the productiveness of the establishment which the act wishes him to have. It will be no secret to him, that the same quantity of labour at the expiration of an apprenticeship, is worth rather more than at the commencement of it. Nor will the necessity sit much heavier on the committee, if they either set a value upon the friendship of the governor, or set the same value upon this engine of punishment as appears to have been set upon it by the maker: the committee of three, I mean, who, when not so many as three, are not more than one, and who, sitting in the dark, with an interested prosecutor, their creature and their dependent, at their elbow, cumulate the functions of judge and jury. This I know, that were I a candidate

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to be more and more relaxed, but the *confinement* likewise. What is the consequence? Corruption—corruption still greater than before, if already it was not brought to its highest pitch. For how is it where the confinement is strictest? Even there, association promiscuous, or nearly promiscuous, takes place at different times of the day—at working-times, at meal-times, and at airing-times. How then can the confinement be relaxed, unless it be by increasing the already too great liberty of association? They are not any of them surely to be let out of the house? they are therefore to be suffered to go about idling and confabulating and confederating within the house. And at what period is this increased relaxation and increased faculty of association to take place? at the very period the nearest to that of their discharge, when all the bad lessons they have collected from one another, whatever they are, may be transferred from theory to practice.

* This is one mode of construction: is it the right one? I will not be positive: it would take an argument of an hour long to attempt to get to the bottom of this darkness. Here is the clause, in its own words, that I may be sure of not doing it an injustice:—"And in case of removal into any prior class, the offender shall, from the time of making such order of removal, go through such prior class, and also the subsequent class or classes, in the same *manner* as under his or her original commitment, *and* for such *additional* time as such committee shall think proper to order, so as the whole time of confinement, to be computed from such order of removal into such prior class to the final discharge of the offender, shall not exceed the original term for which he or she was committed."

Does the word *manner* include the consideration of *time*? It should seem yes. It surely might, if nothing else were said about time. *Additional* with relation to what? additional with relation to the longer time they would have to stay in consequence of their being *turned down* into a lower *class*, supposing nothing expressly said of time? or merely additional with relation to the *original* time specified in the *sentence*? In the latter case, the sense would have been more clearly expressed by leaving out the word *additional*, or the word *and*, or both of them:—*in the same manner . . . . and for such time as the committee shall . . . . order — in the same manner . . . . for such additional time — in the same manner . . . for such time.*—In any of these three ways, the expression would have been clear on the side of lenity, proportionality, and reason. If neither the word *and*, nor the word *additional*, were designed to ensure the contrary construction, no effect at all is given them, and they serve only to perplex. Thus then stands the question: the letter of the law pretty decidedly on one side; reason, as I conceive it, on the other: but what sort of a guide would reason be to trust to throughout this law?

Thus much is certain: that a cruel, or what is more to be feared, an interested committee-man, leagued and connected with the governor, might, without the smallest risk or even imputation, take the rigorous side; and what is remarkable, the abuse would not in any possible way be susceptible of a remedy. Convened before the Court of King's Bench, what possible fault could be found with a committee-man who had been in the constant habit of sentencing no prisoner for less than two years? "How came you, for so slight an offence, to inflict imprisonment for so long a term?" "Because I found myself obliged: the law is peremptory: it does not admit of a shorter." "No; you mistake; you were not bound." "Well, if I was not bound, I am sorry for it: but I have done no wrong; for I thought I was, and you cannot deny that I was empowered." Had the discretion given not extended to so long a period, the stretch, if the construction authorizing it were not approved of, would have been chargeable with illegality, and there would have been something to have appealed from. Here, as there is no pretence for a charge of illegality, there is no ground upon which an appeal can build itself.

To form a just conception of this clause, and of the spirit which pervades this act, add to the mischiefs of a plan bad in principle, the mischiefs of perplexity and ambiguity resulting from complication. O simplicity! heaven-born simplicity! when wilt thou visit the paths of law?

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for the management contract, I would make no inconsiderable allowance for such a clause, especially so worded: I mean, if I could bring my conscience to such a degree of relaxation, that the idea of taking a sentence of imprisonment for a few years, and altering it under the rose into a punishment for life, sat as easy upon me, as that of a similar transformation appears to have sitten, I hope through inadvertence, upon the planners of the colonization scheme.

The mischief roll is not yet read through. The proportion of punishment, such as it is, what does it depend upon?—upon the degree of delinquency which called for it? No—not in any shape. The punishment is proportioned, not to the magnitude of the offence, but to the length of a man's term: not to the offence for which he is punished, but to another offence which has nothing to do with it, and which has already had its punishment.

That *punishment* is the only use this classification is put to in the act itself, is certain. But was it really designed for an engine of punishment, and nothing else? If so, the awkwardness of it is not less remarkable than the expensiveness. Three equal periods of a man's term, three years say, is the time it is supposed to be wanted for. For one of those periods it can't be used; since for such time as a man is in this "*first*" class, as it is called, meaning the lowest, there is no lower class into which he can be turned down. What is this period during which it can't be used? The very period, of all others, during which, if in any, it would be wanted. When is it that punishment in every shape is in most demand?—when is it that unruliness is most to be apprehended, and requires the greatest force to combat it? One would think it were when coercion was most new. A bit for breaking in horses, which has this peculiar property belonging to it, that it can't be used till the horse has gone a twelvemonth upon the road! an engine that cost £11,700, and that can never be used till experience has shown that there is no need of it!

Was the sinecure establishment that we have seen grafted on this classification plan, meant as a fund of *reward?* It is still worse contrived for reward than the engine of punishment made out of the classes is for punishment: that cannot be used till one-third of the term is over; this, not till two-thirds are at an end.

One glance more, and I have done. Two divisions or classifications, the reader may have observed, running on together: two classifications made upon so many different principles: the first grounded on capacity for hard labour, as indicated by age, sex, health, and ability: the other on length of standing; that is, not on *absolute* length of standing, but *relative*—relation had to the proportion elapsed of each man's term. If this account be obscure, I am sorry for it, but I cannot help it: were it altogether otherwise, it would not be a faithful one. These divisions cross and jostle one another in effect; but in idea each may be considered by itself. Let us observe for a moment the consequence of the first of them. Two classes of persons are carefully distinguished, and placed in situations as opposite as possible: from that moment, their treatment, as to everything that remains of it, is uniformly the same. Two sets of people, and but two: to heave at a capstern, or what is looked upon as equivalent, the employment of the one; to knit nets, or some such thing, the occupation of the other. No medium: straining to excess, or sitting almost without motion. The labour of the former might be too severe; that of the latter not sufficiently so. Preservatives require to be employed against both excesses: clauses to restrain undue severity in the one case, clauses to restrain undue lenity in the other. What does our legislator? He twists both kinds of clauses together, and applies them indiscriminately to both classes of workmen, and both classes of work. What is the consequence? Every such clause is a two-edged sword: with one edge it destroys one part of the company; with the other edge, the remainder. With the one he thus cuts up one half of his own purposes; with the other, the other half. Because 14 or 15 hours would be too long for one set to heave at a capstern, the others, who are to do nothing but sit and knit, are not to have any more than 10, than 9, than 8 hours, to do that in, or anything else: because three or four hours would be nothing to employ in knitting, those who are to heave at a capstern are to heave on for not less than 8, 9, or 10 hours, and longest when the heat of the weather has rendered the fatigue most intolerable: because those who are to sit knitting would soon be dead were they to do nothing but sit or lie a-bed without exercise, the capstern-heavers, who have been heaving and straddling till they cannot set one foot before the other, are also to have their walk: because the capstern-heavers will be dead with fatigue before their day is half spent, the knitters are to have 14 hours out of the 24, and never less than 12, to soak in bed; and this is called keeping them to hard labour: because the capstern-heavers will be worked to death before their term is one third over, the knitters, by the time they have gone through a third of theirs, are to have a part of their knitting hours struck off; and by the time they have gone through two thirds, the abatement is to be doubled.

"Exaggeration! exaggeration! Can you seriously, then, pretend to believe that mischiefs like these would really ensue?"—I

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hope not — I trust not; at least, not in any such degree: in some way or other, the worst of them would be got rid of. These, like others, would somehow or other find something like a remedy. True: but who should we have to thank for it? — those who contrived the act? No, but those who would have to execute it; that is, to struggle under it, and save themselves from executing it. Of two things, one: executed, it is ruinous; not executed, it is useless: such is the dilemma that pursues it through every part of its career. The provisions either will, or will not, have the effect of peremptory ones. In the one case, they are productive of the mischief which we see: in the other, they are of no effect against the mischiefs which they themselves have in view.

Recapitulation. — Errors collected under the single head of *Employment* — fruits of legislative interference in matters of domestic and mercantile economy.

1. Setting out with a wrong *object* — *hard labour* instead of *profit*.

2. Undertaking to give any *regulations* or *instructions* at all with regard to *choice* among the species of employment.

3. Grounding the choice upon a *wrong principle* — employing human exertion to generate pure force.

4. Making peculiarly *disadvantageous applications* of that disadvantageous principle — capstern-work put upon a line with wheel-work.

5. Prescribing other *employments particularly disadvantageous* upon the face of them; such as beating hemp, rasping logwood, chopping rags — operations already performed to more advantage by machines moved by the elementary *primum-mobiles*.

6. Putting a negative upon *mixture of employments*, though alike recommended by health, economy, and comfort.

7. Putting a negative upon a free *change* of employments, as economy may occasionally require.

8. Limiting the quantity of labour, either one way or other, in point of *time: working-hours* not fewer than 8, 9, or 10 in a day, nor more.

9. Making the limitation different in different *seasons:* 10 hours for seven months, 9 for two other months, and 8 only for the remaining three; thence losing so much in the two latter seasons.

10. Making the limitation such, that the exercise shall be *hardest* in the season when men are *least able to bear it*.

11. Making further deduction from the sum of labour on the ground of *length* of *standing:* striking off so much when one third of the term is over, and so much more when two thirds, with or with out limiting the amount of the deduction, or specifying the mode.

12. Making the deductions *per saltum:* two degrees only of relaxation, two classes only of prisoners, to the disregard of the numerous differences indicated by the circumstances of individuals.

13. Facilitating undue preferences: — by the power given of changing the work from real to nominal.

14. Authorising excessive additions to the duration of punishment, by a judicature secret and arbitrary, and liable to be interested.

15. Establishing an *expensive fund* of reward and punishment; and that so constituted, that it can never be used till the inutility of it has been demonstrated by experience: degradations and indulgences that cannot take place till one third or two thirds of a man's time is over.

16. Prescribing, under the common notion of hard labour, two classes of employments as *opposite* in point of severity of exercise, as possible, without any medium.

17. Prescribing for such opposite measures of exertion, the same measure of *relaxation;* and that in every particular — hours, seasons, and length of standing.

SECTION VI.

DIET.

ON the important head of diet, the principles already established leave little here to add.

1. Quantity — unlimited;* that is, as much as each man chooses to eat.

2. Price — the cheapest.†

3. Savour — the least palatable of any in common use.‡

4. Mixture — none.

5. Change — none, unless for cheapness.

6. Drink — water.

7. Liberty to any man to purchase more palatable diet out of his share of earnings.‖

8. Fermented liquors excepted, which, even small beer, ought never to be allowed on any terms.§

* Rule of lenity, see Section 1.

† Rule of economy. ‡ Rule of severity.

‖ *Rule of economy.* — Few cases, I believe, there are, if any, in which it will not be found advantageous, even in point of economy, to allow a man, in the way of reward, a proportion of his earnings. But *reward* must assume the shape of a present gratification, and that too of the sensual class, or, in the eyes of perhaps the major part of such a company, it can scarcely be expected to have any value; and if it take a sensual shape, it cannot take a more unexceptionable one.

§ *Rule of severity.* — How many thousands of the honest and industrious poor are incapable, unless at the expense of food and nourishment, of giving themselves this unnecessary indulgence!

The mischief done to health by the use or abuse of fermented liquors is beyond comparison greater than that effected by all other causes put

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Thus speak our three rules. Look round among the systems in practice: we shall find them all three transgressed, and what is more, the opposite excesses united in one and the same transgression. Many different dietaries have been adopted, prescribed, or recommended. These opposite defects may be observed more or less in all of them. In all of them, the food is limited in quantity: in all of them, it is more or less too good in quality. At Wymondham, three different sorts of things in turn, but of the only one of which the quantity is specified, viz. bread, a deplorably scanty measure. Thus far, however, right, as, except one meal in the week, animal food forms no part of it.*

Twopenny worth of bread only for a whole day! and this under the hardest as well as the easiest work! Twopenny worth of bread? Many a man will eat as much with his meat at a single meal. The allowance settled, too, not by quantity but by value! If thus scanty when at the largest rate, what must it be when one third of it is struck off? Under a regimen like this, a prison must be a scene of perpetual famine. I read it in the dietary: Howard read it in men's countenances. "Several young men," says he, (his visit was in 1788†) "seemed as if they could not go out so fit for labour as they come in." *Nobody*, it is said, *dies there*. I believe it—they do not stay there long enough: but there are slow poisons as well as quick ones. *Nobody*, it is added, *is sick there*. I deny it: everybody is sick there, and always. Is not a perpetual gnawing in the stomach a disease? Work little or much, behave well or ill, this is to be their fate. Were I to put a man to such a regimen, which as a necessary means to a fit end I should not scruple, I should speak honestly, and call it *torture*—I should use it instead of a thumb-screw: it is applying the rack to the inside of the stomach, instead of the outside of a limb. *Men that have once been there, do not come there a second time.* I dare say they don't; nor would they, were their allowance thrice as great as it is. It is said, *the profits of the work are more than double the expense of this maintenance.* I dare say they are. Why?—because the maintenance is less than half what is sufficient.‡

The good Howard, who with me protests against this dietary, has given us one of his own: and in this, as in so many other instances, has shown how little self was in his thoughts. Good things, a variety of them, and butcher's meat amongst the rest.‖ Butcher's meat twice, or rather four times a-week, to felons whose diet is to be their punishment! Butcher's meat for the lowest vulgar, as if for fear a cheaper diet should not agree with them! He himself all this while never suffering a morsel to enter within his lips. Yet what man ever enjoyed a more uninterrupted flow of health and spirits?

This inconsistency, in a word, runs through all the dietaries I have ever met with. Nobody has ever had the courage to be either cruel enough to feed felons as so many honest men would be glad to be fed, or extravagant enough to give them as much of the poorest food as they require. The simplest course, one would think, was doomed to be always the last thought of.

I look at the *hulk* dietaries; and in these, animal food abounds more than in any other. This is not difficult to be accounted for. The prisons are ships—the guards seamen: it must

together. The use is in fact none at all, where habit is out of the question. It would be next to impossible to tolerate a moderate enjoyment without admitting excess. The same beverage that produces no sensible effect on one man will overcome another. Even small beer ought not to be excluded from the general proscription; for there can be no commonly practicable test for distinguishing small from strong; and I have known constitutions to which even ordinary small beer has afforded the means of intoxication.

* WYMONDHAM DIETARY—TWO MEALS.

Breakfast.—A penny loaf every day.

Dinner.—Ditto two days, potatoes two days, boiled pease two days, ox-cheek soup one day.

† September 12.—On *Lazarettos*, p. 152.

‡ God forbid what is here said should be the means of throwing anything like odium on the labours of the respectable magistrate to whom the public is indebted for this regimen and the account we have of it. Of the purity of his intentions, malice itself could not suggest a doubt: of his having conscience on his side, he has given the most unquestionable proof that man can give; for it is he himself who publishes his plan, and calls upon the world to judge of it. Seeing that economy was the point at which the penitentiary system stuck, it was his zeal for the system that carried him these lengths to serve it. Is this serving it as it ought to be served? that is the question. It is an honest difference between us, and I hope not an irreconcileable one. But while my opinions on this head remain as they are, I cannot help regretting, for the sake of the prisoners, that some contracting Jew had not had the management of the prison. The most rapacious of the tribe would not have dared to go such lengths on the side of parsimony, as this gentleman has gone from the purest motives: if he had, instead of proclaiming it and calling for imitation, he would have been as anxious to conceal it as if he had stolen what he saved.

‖ HOWARD'S DIETARY.—Good wheaten bread, 1½ lb. daily; viz. ½ lb. at breakfast, and 1 lb. at dinner.

Breakfast.—Every day ¼ of a pint of wheaten or barley meal, oatmeal, or rice made into soup.

Dinner.—*Sunday* and *Thursday*, 1 lb. of beef, mutton, or pork, without bone.—*Monday* and *Friday*, A pint of pease boiled in the broth of the preceding day.—*Tuesday*, Half a pint of wheat or wheat flour made into pudding or soup.—*Wednesday*, 2 lb. of potatoes, turnips, carrots, or other vegetables that are in season.—*Saturday*, ¼ lb. of cheese, or the vegetables as on Wednesday.—On *Lazarettos*, p. 238.

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be seaman's provender. What was the custom at sea, would of course be kept in view, not what was the custom elsewhere, where men are kept cheaper; much less, what are the demands of nature. Neighbour's fare could not well be denied; especially when such a price was paid for it. Howard, too, had been there, and grumbled: and there were those who had the fear of Howard before their eyes. The powers above were doubtless told, that all this good living was well paid for in work: men who work hard must be well fed; and when men are well fed, those who feed them must be well paid for it. What has not been said, I suppose, to the powers above, is however most true, that what is paid for thus working men and feeding them, over and above what need be paid, is more than even the pretended value of their work.

Turn now to the penitentiary act. Another visit to the kitchen, and as much got by it as before. By § 35, every offender is to be "sustained with bread and any coarse meat or other inferior food, and water or small beer."

For humanity, for health, for comfort, what does this do? Nothing. In what respect can the prisoners be the better for this article? In none. What says it? That the food shall be sufficient? No. That it shall be wholesome? No; not so much even as that. What then? — that bread shall form a part of it. They are to have — what? bread and something besides. What is that something to be? is it to be meat, at all events? No: but either meat, so as it be coarse, or any thing else whatever, so as it be of an inferior kind. Inferior to what? *That* the statute has not told us, and it would have been rather difficult for it to have told us.

For economy, what does it? Nothing. — Does it set up any sort of barrier against unthriftiness or waste? May not meat, though coarse, be unthrifty food, if furnished in an unnecessary quantity, or laid in upon unthrifty terms? Might not their caterer cram them with Polignac rolls, for anything there is in the act to hinder him?

It does worse than nothing. One thing it does determine: bread they must have — bread for ever, and at all events. Why always and at all events bread? Is it that bread is always the cheapest of all food? By no means. Whether it be so at any time, it is not necessary to inquire: it is sufficient that it is not always. Bread is a manufacture. Does not the earth afford substances that will serve for food — that are actually made to serve for food, with less expense of manufacture? Is bread anywhere a necessary article? Is it so much as universal amongst ourselves? Are there are not hundreds of thousands, nay millions, of honest men in the three kingdoms, to whom the very taste of it is unknown? Is not Ireland fed with potatoes? Is not Scotland fed with oatmeal? Is that inferior grain so much as manufactured into bread? Are Irishmen a puny race? Is the arm of the Highlander found weak in war? — What a lesson to hold out to so large a portion of the people! — that the food they are content with, the best their country can afford them, is not good enough for felons!*

For what purpose, then, can this regulation serve? — for what could it have been meant to serve? For guidance? — for instruction? Did it need the united power and wisdom of King, Lords, and Commons, to inform us that there are things which may be eaten with bread, and that meat is one of them? Almost equally useless is that part which prescribes the drink, though not equally pernicious. They are to have — what? Either water or small beer. If the being confined to water is an undue hardship, what does this clause to save them from it? If it is not an undue hardship, why expose the public to be put to the expense so much as of small beer? In what respect is the regulation of the smallest use to them? Though they were to have beer given to them, is there anything in the act to prevent its being sour or musty?

For what use, then, this regulation about diet, when profusion is left without bounds, and when the prisoners may be starved or poisoned for anything that it does to save them? Ask of what disservice: the answer is plain, and not to be contradicted. It prevents them from being fed so cheaply as otherwise, without any prejudice to health, they might be. In this important article good economy and this act cannot exist together.

Ask my contractor, and after a year or two's trial he will tell you distinctly how many thousands the nation would have had to pay for this excursion into the kitchen. The world, you will find, might be sailed round and round for a small part of the expense.

Vain would it be to say, "So long as you give them bread, though it be but a morsel, you may compose the bulk of their food of whatever is cheaper, without violating the letter of the law." Certainly: but could you

* Not only bread is to be given at all events in ordinary, but even where an inferior diet is prescribed to be given for punishment's sake, still it is to consist of bread. Guilt upon guilt, and the most guilty among the guilty are never to be sunk so low in this school of rigid discipline, as to be no higher than upon a par with liberty and innocence.

Even lenity itself, were that the only consideration, would afford an objection against the fixing upon bread as a necessary article. Bread being a sort of food which is commonly eaten with meat, and with which meat is commonly eaten, the giving it without its usual accompaniment would naturally make the privation the more sensible.

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without violating the spirit? without departing from what it was evident the authors had in view? Is not the article of bread put foremost? Is it not evident that, according to the notion and intention of those who drew this clause, bread was to compose the principal part of the men's food? But suppose the clause not obligatory — what would it then be? Nugatory. Here, as before — mischief, or nothing — such is the alternative.

Turn them over to a contractor, and observe how different the result. No need to rack invention to prevent his spending too much upon their food. Leave it to him, and one thing you may be sure of, that in this way, as in all others, as little will be spent upon them as possible.

The only thing to fear in this case is, lest he should not bestow as much upon them as he ought. But against this you have your remedy. Do what the penitentiary act has not done: require that the food shall be wholesome, and that there shall be enough of it. This is something. It is such ground as not only popular censure, but a legal indictment, may be built upon. Is it not yet enough? Say that, punishment apart, he shall feed them to the extent of their desires. Will he still fail you? Hardly. Even upon the plan of the present penitentiary act, some eyes, upon the Panopticon plan all eyes, are on him. The latitude thus given him, with regard to the choice of the food, which of course will be of the cheapest sort, is even of service to his integrity, and to the comfort of the prisoners in this respect, by the jealousy it excites. Whatever he does in this way is his own doing — the result of a motive, of which the force is known to every one, and regarded with a suspicion which is as universal as it is reasonable. It is his own doing, and seen by everybody to be so. No pretence of public good — no letter of any law to afford shelter to inhumanity or avarice.

SECTION VII.

CLOTHING.

A FEW words under the head of clothing, and but few.

Health, comfort, and decency, prescribe the limits on one side: economy on the other. Fashion, the supreme arbiter everywhere else, the cottage not excepted, has no jurisdiction here.

The penitentiary act points out two other objects as proper to be kept in view: humiliation, and safe custody. So much for generals: happily, under this head, it keeps clear of specifications.

Two hints I will venture to offer to my contractor in this view: —

I. For men, coat and shirt-sleeves of unequal length: the left as usual—the right no longer than that of a woman's gown.

Economy is served by this contrivance in a small degree: safe custody in a greater. The difference of appearance in the skin of the two arms will be an essential mark. In point of duration, nothing can be more happily suited to the purpose; it is a permanent distinction, without being a perpetual stigma.

Exclusive of this pledge, I look upon escape out of a Panopticon—I have said so over and over — as an event morally impossible. But suppose it otherwise: how great the additional security which an expedient thus simple would afford!

A man escapes. Minute personal description, *signalement*, as the French call it, is almost needless: one simple trait fixes him beyond possibility of mistake. His two arms wear a different appearance: one, like other men's — the other, red and rough, like that of a female of the working-class. No innocent man can be arrested by mistake. He bares his two arms: — "Observe they are alike; I am not the man — you see it is impossible."

The common expedient is, one sleeve of a different colour. This costs something — it saves nothing; and when the coat is off, the security is gone.

Hardship there can be none: the tenderer sex, even in its tenderest and most elevated classes, has both arms bare. Among the Romans, even the most luxurious and effeminate, not the fore-arm only, but the whole arm, was bare, up to the very shoulder.

II. In both sexes, on working days, shoes wooden; stockings, none: on Sundays, stockings and slippers.

Shoes wooden, for several reasons:—

1. They are cheaper than leather.

2. Among the common people in England, they are known as a sort of emblem of servitude.

3. By the noise they make on the iron bars, of which the floors of the cell-galleries are composed, they give notice whenever a prisoner is on the march. Putting them off, in order to prevent this, and escape observation, is an act which, if forbidden, will not be practised, where non-discovery will be so perfectly hopeless. Besides that the bars would give pain to bare feet not accustomed to tread on them.

4. Were the prisoners to go bare-foot, the bars which form the floor of the galleries must be so much the closer, consequently the more numerous and expensive.

5. In climbing, with a view to escape, it would be impossible to make use of the feet, either with the wooden shoes on, or with naked feet kept tender by the use of shoes. Common leather shoes, especially when stout and coarse, are of great assistance in climbing,

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and bare feet, hardened by treading on iron and on the bare ground, might find no great difficulty. Bare feet, that were accustomed to shoes, would serve as indifferently for running as for climbing; and a fugitive would hardly carry about with him so palpable a mark of his condition as a pair of wooden shoes.

Neither in this privation, fashion apart, is there any real hardship. Not to mention antiquity, or foreign nations, in Ireland, shoes and stockings are rare among the common people in the country.* In Scotland, these habiliments are not generally worn by servant-maids, even in creditable families.

It is on account of fashion, and the notions of decorum dependent on fashion, and to avoid giving disgust to the chapel-visitors, that I propose stockings and slippers for Sundays. Slippers in preference to shoes, as helping to keep up the distinction, and being less expensive. Slippers, according to our customs, suit very well the condition of those who it is not intended should ever be absent from home. But in the East, they are worn at all times in preference to shoes.

As to the rest, see the title of *Health and Cleanliness.*

SECTION VIII.

BEDDING.

A WORD or two, merely to set the manager at liberty on the article of *bedding.* More unlegislative minuteness — more unthrifty fixation. Each prisoner is to have a bedstead; that bedstead is to be iron; the sheets are to be one or more; they are to be hempen; there is to be a coverlet; there are to be blankets; there are to be two or more of them, and they are to be coarse. Why a bedstead at all events, and that of iron, by act of parliament? Not that there is any harm in giving prisoners iron bedsteads: it is what I might, for aught I know, give them myself, if it depended upon me. Here, again, what is the object?—comfort, or economy? The former gains nothing, and the latter suffers by it. Spite of the act, your bedstead, though of iron, may be so dear as to be an unfrugal one, or so scanty as to be an uncomfortable one. Procrustes, were he manager, would find nothing in it against his bed. Is it that iron is the cheapest material for bedsteads? A contractor, then, had it been left to him, would have employed it. But it is not cheaper: a wooden one of the same size may be had for less money; and a bedstead, even a wooden one, will last for ages.†

But why force bedsteads upon the manager at all? Is it so certain that they will be preferable to hammocks? Is it so certain that they will be cheaper? Will they be warmer? Will they require less bedding? Will they take up so much less room? Is there anything in hammocks inconsistent with good health? Had the immortal crews of the Resolution and Adventure anything else to lie on? Can hammocks, any more than iron bedsteads, harbour bugs?

Why *matting?* Is it that you are afraid of their having feather-beds? My contractor would ease you of your fears. Why matting, and not *straw?*‡ Matting is not so favourable to cleanliness as straw. Matting, being a manufacture, costs something to make, and cannot be shifted every week or fortnight, on account of the expense: straw might; the more easily, because, having performed this service, it might be applied to other uses with little loss of value.

Sheets, why hempen at all events? If flaxen be cheaper, why have hempen ones? If dearer, what fear is there that the governor, if he undertook the business by contract, would allow them?

Blankets, too — to what end speak of blankets and coverlets, and enact that the blankets shall be "coarse," leaving the coverlet to be of eider-down? Peculation or extravagance might give each man blankets by dozens, and those of beaver or vigogna wool, for anything there is here to prevent it: avarice might starve him with a worn-out linen coverlet, two thread-bare blankets, and those not worth picking off a dunghill.‖

SECTION IX.

HEALTH AND CLEANLINESS.

HINTS relative to this subject are not noble

* Young's Ireland, p. 121.

† Bugs, it is true, may lodge in wooden bedsteads. This is a very good reason for preferring iron ones for hospitals. But there the case is different in a thousand respects. Comfort is the great object there: by discomfort and want of rest, even a bug bite may be productive of serious consequences. In hospitals, the introduction of such vermin is facilitated by the promiscuous access incident to a frequent change of inhabitants, and to a state of freedom: discipline, in this as in other points, cannot be enforced with equal rigour or facility.

‡ To inclose the straw, as Howard says, there should be a sack, for several reasons.

‖ If you must regulate, do what for the hulks the act has not done, and save men from the incommodious and indelicate necessity of lying two in a bed. On board the hulks, this was (and I suppose is) the case, as the evidence the authors of this act had before them declares.

The single sheet the act allows of is an awkward and uncomfortable contrivance. A sack, with a flap under the chin, would take less stuff, and be more comfortable.

This, let it be observed, is in a note, and not in an act of parliament.

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in themselves; but they are ennobled by the end.

1. No blowing of noses but with a handkerchief.

2. No spitting, but in a handkerchief or spitting-box.

3. No tobacco in any shape.

4. Washing of hands and face at rising and going to bed.

5. Washing of hands immediately before and after each meal.

6. Washing of feet at going to bed.

7. Hair of the head to be shaved or cropt: if shaved, to be kept clean by washing; if cropt, by brushing.

8. Bathing to be regularly performed: in summer once a-week; in spring and autumn once a-fortnight; in winter once a-month.*

9. Shirts clean twice a-week.

10. Breeches washed once a-week: coats and waistcoats once a-month in summer; once in six weeks in spring and autumn; and once in winter: sheets, once a-month: blankets, once in summer.

11. Clothes all white, and undyed: by this means they can contract no impurity which does not show itself.

Observations.—Much of the regimen on this head must of course be arbitrary: it may be tightened by some—it may be relaxed by others, and yet nobody to blame.

Nothing like all this nicety with regard to cleanliness can be necessary to health: in some points, it is more than is practised by persons of the highest stations and of the greatest delicacy. But the great use of it is to ensure success to the plan of chapel-visitation, in which view it is absolutely necessary to prevent everything that can give disgust to any of the senses. To get a bow straight, bend it, says the proverb, the opposite way.

This part of the regimen has even a higher object. Between physical and moral delicacy, a connexion has been observed, which, though formed by the imagination, is far from being imaginary. Howard and others have remarked it. It is an antidote against sloth, and keeps alive the idea of decent restraint, and the habit of circumspection. Moral purity and physical are spoken of in the same language: scarce can you inculcate or commend the one, but some share of the approbation reflects itself upon the other. In minds in which the least grain of Christianity has been planted, this association can scarce fail of having taken root: scarce a page of scripture but recalls it. Washing is a holy rite: those who dispute its spiritual efficacy, will not deny its physical use. The ablution is typical: may it be prophetic!—Alas! were it but as easy to wash away moral as corporeal foulness!

Here might regulation range, and economy receive no disturbance. *Accordingly*.....shall I say?—No: I will not be spiteful:—but however, so it is, the penitentiary act is silent.

On reception in particular, thorough cleansing in a warm bath—thorough visitation by the surgeon. This in a *reception-house* without the building. Clothing new from top to toe—the old thoroughly scoured or condemned. Ablution—regeneration—solemnity—ceremony—form of prayer:—the occasion would be impressive. Grave music, if the establishment furnished it; psalmody at least, with the organ. To minds like these (to look no farther,) what preaching comparable to that which addresses itself to sense?

SECTION X.

OF AIRING AND EXERCISE.

THE use of airing is to serve as a preservative to health.

Literally taken, it means nothing but exposure to the air. But under the notion of airing is tacitly included that of exercise. As a means to the above end, either would be incomplete without the other.

In the choice of a plan of airing for a penitentiary-house, and in particular for a Panopticon penitentiary-house, the following are the qualities that appear to be particularly desirable:—

1. That it be sufficient for the purpose of health, for the sake of which it is instituted.

2. That it be subject to the inviolable law of inspection.

3. That it be not incompatible with the degree of seclusion pitched upon.

4. That it be capable of being applied regularly and without interruption.

5. That it be favourable to economy, viz. either by being productive of a profit, or at least of being applied with as little expense and consumption of time as may be, on all days except those in which religion is understood to put a negative upon that worldly consideration.†

Walking in a wheel is a species of exercise that fulfils to perfection every one of the above conditions.

* In cold weather, immediately before the summons to the wheel would be the best time. The warmth lost in the former operation would thus be restored with interest by the latter.

† In the Wymondham penitentiary-house, the place allowed, the only one that can be allowed, for airing, is the inclosed quadrangle within the building, an area of about 70 to 80 feet. In this the air is taken—by whom? by all the prisoners? No: but by "*some*" only. And by those how? regularly? No: but "*occasionally*." Why by some only, and by those only ocasionally? Does the necessity of air and exercise to health and life come at odd times, and vary with the degrees or fancied degrees of guilt?

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1. It does every thing that can be wished for with regard to health. You may give a man as much or as little of it as you please. It is but a particular mode of walking up hill. A lazy prisoner cannot cheat you. The turns may be numbered — there are known contrivances for that purpose. A partial or tyrannical inspector cannot assign to a prisoner too little of this exercise, or too much. The effect is produced by the mere weight of the body successively applied to different points. Exertion cannot be shrunk from by one man, or exacted beyond measure from another. The exercise is the same, or nearly the same, for one man as another: for a heavy man as for a light one.

2. That it is capable of exposure to inspection, is evident enough. It is scarce necessary to observe that the axis of the wheel should be placed in a line not widely deviating from a right line drawn from it to the inspector's eye, when stationed in the *look-out* or *exterior lodge*.

3. It is not incompatible with the strictest plan of seclusion: not even with absolute solitude. Whatever persons are companions in a cell, the same persons and no others may be companions in a wheel. The different parties may relieve one another in the way that will be pointed out presently, without any opportunity of converse.

It is beyond comparison more compatible with seclusion, and even with solitude, than ordinary walking. Requiring more exertion, a given quantity of it will go much farther, and is performed without change of place. It is walking up a hill, and that a pretty steep one.

4. It need not suffer any interruption whatsoever: not even in the worst of weather. To each airing-wheel there is an *awning*, to be used only in bad weather, supported by a few slight iron pillars, and composed of canvass, or whatever else is cheapest. It is provided with side-flaps all round: such of them only as are necessary to keep out the weather are let down; that side alone excepted which is towards the inspector, and which, if let down, would impede his view. To extend the protection to this open side, the aperture is covered by a short projection like a *porch*.

5. It is not only favourable to economy, but the only operation ever thought of in this view that is so. It is all profit; and this profit is obtained without any sacrifice. It is not in the smallest degree the less healthful for the profit which it brings: walking up hill is not at all a worse exercise, though it will go farther, than walking on plain ground. Health and economy are not upon such bad terms as the authoritative plans of penitentiary management seem to suppose: an operation is not unfitted for the one purpose, merely by being made subservient to the other. No other of the modes as yet proposed of applying forced labour is equally advantageous, or equally unobnoxious to abuse. Heaving at a capstern, the exercise placed on a line with it by the penitentiary act, bears, as we have already seen, no comparison with it.

6. This exercise, it may be observed, is applicable with equal propriety to both sexes. What should hinder the setting a woman to walk up a hill, any more than a man? But who could think of setting the weaker and softer sex to strain and struggle at a capstern?

To attempt to determine what are the most advantageous applications of all that could be made of the power thus acquired, would be equally useless and impracticable. It may be applied to any purpose whatsoever, that the form of the building or the dimensions of the outlets do not exclude. Every one who is at all conversant with the principles of mechanics knows, that when you have obtained anyhow a given quantity of power, the direction that may be given to it, and the uses it may be applied to, are at your command. If your trade requires it, you may have a perpetual motion if you please. You may do what the penitentiary act advised you—*saw stone*, *polish marble*, *beat hemp*, *rasp logwood*, or *chop rags*. You may do a thousand things besides; and amongst the thousand, a thousand to five, some that will be more profitable than those. Having it in this case cheaper than you can employ even the powers of nature — having it in short for nothing, you may apply it with advantage, in every instance where there is advantage to be made by dividing labour, in such a manner as to commit the production of the force and the direction of it to different hands.

One indispensable demand there is for it, and but one — the raising water for the supply of the establishment: and health will thus receive a double sacrifice. But for this purpose a small part of the quantity of this sort of labour requisite for airing and exercise will be sufficient: the rest will remain free to be dedicated to economy, in whatever may be its most productive shape.

What is the proportion of *time* that ought to be allotted to this part of the discipline? The quantity, it is evident, will admit of very considerable variation. It will be less fatiguing, without being less conducive to health, if performed at twice rather than once, and divided between distant parts of the day. Less than a quarter of an hour each time will hardly answer any purpose; but that time may be doubled, trebled, quadrupled, if economy should require it. Happily the human frame allows of a considerable latitude in this as well as in most other parts of the dietetic regimen; nor therefore will it follow, that because half an hour spent in this way out of

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four and twenty would be sufficient, a whole one, or even two whole ones, would be too much.

Under the notion of hard labour, the penitentiary act prescribes, as we have seen, eight hours of this exercise out of the four and twenty, at the time of the year when it is least fatiguing, and a quarter as much again when it is most so.

The different parties, I have said, or individuals, may relieve one another without opportunity of converse. On the striking of the clock, an inspector from his gallery opens the cell where the prisoner is whose turn it is to go into the wheel. He takes his course in the track already described.* Arrived at the door which leads to the wheel, by opening it he gives motion to a bell, at the sound of which, and not before, the prisoner who is walking in the wheel quits it and returns to his cell. Silence is enjoined to both parties by a general law. The shifting, being the work but of a moment, and then performed under an inspector's eye, can never, under these circumstances, afford room for a prohibited conversation of any continuance or effect. By the bell attached to the door that opens from the staircase upon the gallery adjoining to his cell, notice is given of the arrival of the returning prisoner to the inspector of his story, who immediately repairs to that spot in the inspection gallery which is opposite to the cell in question, and opens it, as before, to let in the returning prisoner, in the same manner that he who has just descended was let out. The inspector, having a less circle to move in, will naturally have reached his station before the prisoner has reached the corresponding one; but, should this not be the case, the prisoner is instructed to wait in the front of his own cell, without speaking or looking towards either of the adjacent ones. The same instruction is given with regard to every cell by which he has ocasion to pass in his way down and up. And this instruction is not likely to be broke through, as, besides the general security for its observance afforded by the inspection principle, the inspector has, by the above-mentioned bell, received warning to observe.

Mode of Airing on the Parade. — Two inspectors, in the first place, repair from the lowest inspection-gallery by the line of communication to the look-out, taking with them fire-arms, with a proportionable supply of ammunition. In their way they carefully observe that the side doors opening into the parade in the yards from the covered-way through the prisoners' lanes, are locked. Notice being given to the inspectors within, that those in the look-out have taken their station, the prisoners are, in the way already described, let out of their cells. Arrived at the parade, they take their stations on the lines corresponding to their respective cells. They halt till it be seen that they have properly occupied their respective posts. Then, on a signal given from the look-out, the march begins.

To mark the time, and to preserve regularity the better, the assistance of martial music may be called in. Though the object be not military, there is nothing to hinder the copying in this respect the regularity of the military discipline. What are the institutions in which regularity may not have its use? By military arrangement, any number of persons may be kept together or asunder at pleasure, while in motion as well as while at rest. By military discipline, a large number may be kept virtually separated, though collected within a narrow space. At the time of exercise, what conversation can be carried on, even between next neighbours, though not a yard asunder? Even in the milder discipline of the school, if the master thinks proper to command silence, what conversation can be carried on within the circuit of his eye?

It is in this way that hundreds, as we have seen, may enjoy the benefit of air and exercise without the liberty of conversation, in a space which, without an arrangement of this sort, would not be sufficient to afford to three, no, nor to two, the same limited indulgence. In this way, the space absolutely necessary for the purpose may be determined to a foot square, and reduced to the smallest allowance possible.*

Thus much for airing, considered as conjoined with exercise. But too much care cannot be taken to profit by every opportunity that presents itself, of giving the prisoners the benefit of the salutary influence of the open air. The house which they inhabit is beyond example airy. True, but still it is a house. We shall come presently to the head of *schooling*. This exercise of the mind, though it cannot conveniently be conjoined with bodily exercise, may in fit weather be as well performed in the yard as in a confined air. It therefore ought to be, whenever the inclemency of the weather does not absolutely forbid it.

* Through the prisoners' staircase on that side, the grated passage, the prisoners' straits, the prisoners' rising-stairs, and the prisoners' lane, out of which a side-door opens, leading to the wheels. See Part I. § 10, 15, 16, 17, and 20.

* The expense of the music is scarce worth mentioning. On such simple instruments as a fife and drum, a very slight degree of instruction will be sufficient to the simple purpose of affording a measure to the time. That among such a multitude two or three persons susceptible of this degree of instruction should not be to be found, if not already possessed of it, is not to be supposed.

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SECTION XI.

SCHOOLING AND SUNDAY EMPLOYMENT.

EVERY penitentiary-house, it is observed in the Letters, besides being a penitentiary-house, was liable to be an *hospital*. Every penitentiary-house — I might have added, every Panopticon penitentiary-house more particularly, might be, and ought to be a *school*—to children at any rate, since so it is, that even that tender age is not exempt either from the punishment, or from the guilt that leads to it; and why not for the illiterate at least among men? Not many surely will there be, even among the adult members of this community, whose education has been so complete as to have left them nothing to learn that could be of use either to their master or to themselves. To read, to write, and to cast accounts—such ordinary branches of instruction might be common to them all. Of such of them as possessed the seeds of any peculiar talent, the valuable qualities might be found out and cultivated. Drawing is of itself a lucrative branch of industry, and might be made assistant to several others. Music, here as elsewhere, might be made an assistant to the productive value of the chapel. If to a just comprehension of his own interest, the contractor should add a certain measure of spirit and intelligence, he will naturally be disposed to put them in possession, according to their several capacities, of every such profitable talent they can be made to acquire. Who can doubt of it?—their acquirements are his gains. Where is the academy of which the master has so strong or so immediate an interest in the proficiency of his pupils?

Instruction being to be administered, at what times of the week and of the day? Two words—*Sunday Schools*—resolve every difficulty. In them we see a vacant spot, nor that an inconsiderable one, of which instruction in its most respectable branches, intellectual as well as moral and religious, may take possession, without any opposition on the part of economy. Time was wanting for such employments; employments were wanting for this time: both demands are satisfied by a principle so happily established and approved.

Of what nature shall the employment be at those times? Let religion pronounce, the answer cannot be long to seek. Two modes of occupation present themselves: exercises of devotion; and lessons of instruction in such acquirements as are capable of being inlisted in the service of devotion. That the whole extent of the time could not be exclusively appropriated to the former purpose, is obvious enough: the very sentiment is more than will be to be found, until it be planted by instruction, in such corrupt and vacant minds. Paternosters in incessant repetition, with beads to number them, may fill up, if you insist upon it, the whole measure of the day: but the words, instead of being signs of pious thoughts, would be but so many empty sounds — and the beads without the words would be of equal efficacy.

I speak under correction: but for my own part, I must confess, that among arts capable of being employed in the service of religion, I see none that need be excluded, even on this consecrated day, so long as they are actually and faithfully occupied in that service. Among the most obvious are those already mentioned in a more general view; especially that branch of music which has received the name of *psalmody*. And if arts of a more refined and privileged texture, such as that of *design* in any of its numerous branches, could find admittance into so unpolished a society, why should they be excluded even on that day, so long as they wear the habit of the day?*

Mode of Airing and Exercising on Sundays. — To take their lessons they repair, when season and weather permit, to a kind of open amphitheatre in the airing-yard, of which, if necessary, there may be several, placed between the walks of the airing-parade—for which once more see the figure. The form of this erection is circular, with part of the circle cut off as by a secant, in which the instructor stations himself so as to have none of his pupils behind him, nor out of his view. Over the seats may be thrown occasionally a canvass awning, supported by iron pillars, with flaps to let down on the weather side, in case of violent wind or rain. If these flaps be not let down, or not let down on the side towards the look-out, the prisoners in their school are open to the eyes not only of the schoolmaster, but of the inspectors stationed in that exterior lodge. But at the worst, the vicinity of these armed protectors averts from the instructor every idea of danger.†

* Drawing, engraving, and colouring prints of Scripture scenes for editions of the Bible, the Book of Common Prayer, and other religious publications, furnish constant employment for a number of hands incomparably greater than could ever be picked out for such ingenious arts from a penitentiary-house. Reading and writing will, of course, on these days, take religious subjects for their theme; and these vulgar branches of instruction will find sufficient occupation for by far the greater part of the prisoners. But where these inferior sources have been exhausted, what scruple need there be of ascending to the other higher ones? The great object of this consecrated day is to keep alive the sentiment of religion in men's minds: what exercise, therefore, that contributes to that end can justly be deemed unseasonable?

† Were the roof a permanent one, a tiled roof for example, it might be difficult to find a situation where it could be placed without afford-

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It is not a very slight degree of cold, nor a slight measure of bad weather, that should exclude them, on this only day out of seven, from the healthful influence of the open air. But in case of absolute necessity, the business of reformatory instruction may be transferred to the chapel, there to be carried on between or after the times of divine service.

Introduced into the middlemost inspection-gallery by the correspondent traversing-staircase, in the same order as into the airing-parade, and with similar precautions, they take their stations in the chapel-area and lower-gallery attached to it, two armed inspectors having first stationed themselves in the gallery above. Their station gained, the doors by which they have been discharged into it from the circumambient inspection-gallery are locked.* The schoolmaster may either occupy the clerk's place under the pulpit, or quit it and go round to them, according to the nature of the instruction to be conveyed.†

SECTION XII.

OF VENTILATION, SHADING, AND COOLING.

OF ventilation, considered as a part of the regimen, little need be said. In the cold season the process is carried on, and that in perfection, by the apparatus employed for warming: and even in warm weather, where no artificial heat is introduced, the same structure can scarce fail of ensuring the same effect. Were it otherwise, nothing more easy than to keep the windows open, especially on Sundays, and on week-days at airing times, when the prisoners are absent from their respective cells. In other prisons, comfort and health are at variance; and the preference given by uncultivated minds to present feelings over remote considerations, renders the enforcement of this part of the discipline more or less precarious. In a Panopticon, in this as in almost all other articles, transgression is impossible.‡

For *shading* in very hot weather, a strip of canvass to each window may be necessary in the greater part of the circuit.

Of the apparatus contrived for warming, a part might, if it were ever worth while, be made subservient to the opposite purpose. A cellar might occasionally be taken into the sëriduct spoken of in the section on *warming*, and in this cellar as in any other, there might be *ice*.‖

SECTION XIII.

DISTRIBUTION OF TIME.

Example for Working Days.

	Hours.
MEALS (two in a day), ...	1½
Sleep, ...	7½
Airing and exercise in the wheel for those employed in sedentary work within doors, at two different times, in the whole, at least	1
Sedentary work, ...	14
	24

Example for Sundays and Church-Holidays.

Meals, ...	2
Sleep, ...	11
Morning service, ...	1
Evening service, ...	1
Schooling — including catechising and psalmody, ...	9
	24

Out of the time for sedentary work may be taken the small portion that will be necessary for the cleansing of the cells on ordinary days, and the more thorough cleansing to be given in the afternoon of Saturdays. As the cleansing could not so well be performed by candle-light, nor work done after the cleansing, whatever time remained after this latter operation might be bestowed on schooling. The time applied to the latter purpose would, of course, vary according to

ing obstruction in some way or other to the inspection principle.

* Should it be deemed necessary, Mr. Blackburne's mode of sedentary confinement might here be introduced; viz. that of letting down, upon the level of their breasts or stomachs as they sit, a BAR, which, without touching or much incommoding them, prevents their rising till it be removed. Mechanics and anatomy contributed each their share in the production of this simple and ingenious contrivance, which, however, amidst such an abundance of securities, will hardly be deemed a necessary one.

† For instance, reading and writing portions of Scripture or other devotional books. The profane and worldly-minded study of arithmetic might perhaps be looked upon as ill-suited to this consecrated place.

‡ In countries where the intensity of the cold renders men particularly averse to ventilation, deaths, as is observed by Howard from Russian documents, are much more frequent in the cold than in the hot season: a fact the more worthy of observation, as the former, naturally the healthier season, is not there attended with wet, nor subject to vicissitudes as here. In a Panopticon thus equally warmed and constantly ventilated, the season which would elsewhere be the least healthy, may be expected to be the most so.

‖ In a Lazaretto built on the Panopticon principle, as suggested in the Section on *Warming*, a provision of this sort would be not unsuitable, on the score of comfort. Whether on the score of economy, as a means of enabling work to go on at times when heat would not otherwise permit, any such thing could be made to answer, might not be altogether undeserving of consideration. The facility might depend in some measure on local circumstances.

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the season; but in such variation there would be no inconvenience.

Is the time allowed for meals too little? Half an hour for breakfast, and an hour for dinner, is an allowance common among working people in a state of freedom. My boarders, let it be remembered, have not two courses and a dessert: my workmen have not to go to a distance for their repast. Is the number of meals in a day too small? It is twice as great as that in use among the people of antiquity: it is twice as great as that which satisfied Homer's kings.

Is the time allowed for sleep too little? Lord Coke does not allow his student so much by a third.* Did he mean to subject his pupil, the darling of his affection, a youth of birth and education, to hardships, and to hardships too severe to be imposed on felons? Lord Coke knew what a man engaged in sedentary occupations wanted; he spoke from experience. The condition of my felons is, in this respect, twice or thrice as eligible as that of many an honest servant at an inn.†

Are 14 hours out of 24 too many for even a sedentary trade? Not more than what I have seen gone through in health and cheerfulness in a workhouse by honest poor.

This sketch, let it be observed, is offered rather in the way of example, than in the shape of a peremptory rule. All I mean to represent as fixed, nor with that unrelenting rigour, is the time for meals and sleep: as to everything else, the proportions may be infinitely diversified, according to particular convenience.

Fifteen hours in the day employed in lucrative occupations: for, in this regimen, be it never forgotten, even the time found for health is not lost to industry.‡ Fifteen hours out of the twenty-four, without the smallest hardship, and that all the year round; not much less, as we have seen, than double the quantity thus employed in the establishments contrived at such an immense expense for the extraction of forced labour.

Let it not be forgotten, meal times are times of rest: feeding is recreation. Even change of work, especially if from gymnastic to sedentary, is repose, not to speak of recreation.

The four and twenty hours a field for discovery! could any one have thought it? Five, six, seven, precious hours, out of fifteen, thrown away as offal! Such is the account rendered by the authors of the penitentiary act, of the talents committed to their charge!

Seven hours taken from industry, taken even from health, yet not added even to comfort, not to mention an object so perfectly unthought of as the improvement of the mind.

I say, even from health. By the custom of sleeping, or what is still worse, of lying a-bed awake, to excess, the animal frame is relaxed, the spirits sunk, and the constitution debilitated and impaired; the habit of indolence is at the same time formed and riveted, and the texture of the mind vitiated along with that of the body. This a meliorative, a reformative regimen! I had almost called it a corruptive one. As soon would I turn Macbeth and murder sleep, as thus murder health by smothering it under a pillow.

Whence all this waste of health and time, one may almost say of good morals? Is it to save money? Is it that ingenuity has not yet found out an employment for candle-light that will pay the expense of candles? Those employments at least might be carried on by candle-light, and by very little candle-light, (knitting, for example) which are carried on without eyes. But if nothing in this way could be found for them that would fetch money, they should have light to learn to read, or to write, or even to sing by, rather than consume time and health in shaking or shivering in bed, comfortless and alone, to save consuming candles.

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* Sex horas somno: totidem des legibus æquis:
Quatuor orabis: des epulisque duas.
Quod superest ultra, sacris largire Camœnis.

† I happened once to fall into conversation upon this subject with a maid-servant at one of the London inns frequented by night-coaches. She went to bed once a-week at most, nor then slept longer than other people. The other nights all the sleep she had was two or three hours dosing in a chair. No ill health—no complaint of hardship. Such is the power of habit; and so moderate, in comparison of the demands of luxury, are the calls of nature.

Determined, however, on this point as on all others, to be on the safe side, and being assured by men of eminence in the profession, that if the general rule were adapted (as it certainly ought to be) to such constitutions as required the largest allowance, that allowance could not well be less than eight hours out of the twenty-four, such accordingly is the proportion I propose: taking only half an hour's sleep from each of the days of labour to add to that day of which the characteristic destination is to be a day of rest.

Bowing down to the law aphorism, *Peritis in suâ arte credendum est*, and preferring accordingly, on a question of this sort, the opinion of the father of physic to that of the father of English common law, I stand justified by the reverend sage himself, by whom that ancient maxim is adopted and recognised, and who, in the plan of dietetics above quoted, spoke, perhaps, rather as a poet than as a physician, and more from imagination than from experience.

‡ Nor need the portion, if any, which may be thought fit to be allowed to occupations of a literary nature, be all of it without an economical use. Such as could write well enough might copy for hire; at least they might copy the accounts and other papers relative to the management of the house. Even music, were there a demand for it, might find here and there a coypist among so large a number.

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SECTION XIV.

OF PUNISHMENTS.

On this head, I shall not at present be minute: with regard to particulars, a few hints may serve — principles have been laid down in another work.*

Punishments may be increased in number without end, without being increased in severity; they may be diversified with advantage by being adapted to the nature of the case.

One mode of *analogy* is, the pointing the punishment against the faculty abused: another is, ordering matters so that the punishment shall flow, as of itself, from the offending cause. Outrageous clamour may be subdued and punished by gagging; manual violence, by the strait waistcoat; refusal to work, by a denial of food till the task is done. The Spartan discipline may, on this head, furnish a hint for the management of a penitentiary-house,† without pushing the imitation so far as to make want of dexterity a capital offence, or treating British criminals with the degree of severity said to be practised by Spartan parents on their innocent children.

Here, if anywhere, is the place for the law of mutual responsibility to show itself to advantage. Confined within the boundary of each cell, it can never transgress the limits of the strictest justice. *Either inform, or suffer as an accomplice.* What artifice can elude, what conspiracy withstand, so just, yet inexorable a law? The reproach, which in every other abode of guilt attaches itself with so much virulence to the character of the *informer*, would find nothing here to fasten upon; the very mouth of complaint would be stopt by self-preservation — "I a betrayer? I unkind? Your's is the unkindness, who call upon me to smart for your offence, and suffer for your pleasure." Nowhere else could any such plea support itself—nowhere else is connivance so perfectly exposed to observation. This one stone was wanting to complete the fortress reared by the inspection principle: so many comrades, so many inspectors; the very persons to be guarded against are added to the number of the guards. Observe here, too, another advantage of limited association over absolute solitude. In an ordinary prison, society is a help to transgression: in the cell of a Panopticon, it is an additional security for good behaviour.

Covered with the rust of antiquity, the law of mutual responsibility has stood for ages the object of admiration. Fresh from the hands of Alfred, or whoever else first gave it existence, what was the composition of this celebrated law? Nine grains of iniquity to one of justice. Ten heads of families, with walls, woods, and hills between them, each to answer for the transgressions of every other! How different the case under the dominion of the inspection principle! Here shines justice in unclouded purity. Were the Saxon law to be reduced to the same standard, what would be the founder's task? To give transparency to hills, woods, and walls, and to condense the contents of a township into a space of 14 feet square.

SECTION XV.

MODE OF GUARDING ON THE OUTSIDE.

For the more perfect defence of the surrounding wall, I have already ventured to propose a military guard.‡ Such a species of protection, though altogether foreign to the inspection principle, and less necessary to a Panopticon prison than any other, would not be without its use. It would add to the security, without adding to the expense. As far as the construction of the wall is concerned, it might even save expense; since with this help the height and consequent thickness of that boundary need be no greater than what was necessary to prevent conversation between the centinels without and the prisoners, except in a voice too loud not to be heard by the inspector in the *look-out.*‖

Mr. Howard, in competition with his own opinion, to which it gives me pleasure to find my own ideas so conformable — the good Howard,§ with the candour so well suited to his benevolence, produces the counter opinions of two friends of his — the one a worthy man whom I will mention, Dr. Jebb, because he is no more — the other a gentleman of the best intentions, and of the purest zeal for liberty, whom on the present occasion I choose rather to mark by these titles than by his name. According to the one, in no particular or possible circumstance the interference of the established "army should be admitted;" according to the other, "the objections against the military are numerous, obvious, weighty, and irresistibly conclusive." It is with concern one sees such opinions with respectable names to them, so worded and in print. A man writes naked *opinions* to a friend to whom he writes any thing: but to the public he gives *reasons.* As to the "objections," of which, however "obvious," none, I must confess, are discernible to my eyes—of these objections, if they weigh any thing, the lightest would have had more weight in it than all this sound. What! — "in no particular or possible circumstance?" — would it have been better

* Introduction to the Principles of Morals and Legislation, 4to, 1789.

† A boy was not to have his breakfast till he had shot it off a tree.

‡ Postscript, Part I. § 20, 21.

‖ Ibid. p. 102, and 108.

§ On Lazarettos, p. 224.

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that London should have burnt on, than that the military should be employed in putting out the fires?

Upon the subject of this class of men, my notions, though not altogether so heroical, are, like those of the good Howard, much more simple. I would have as few of these regulars as possible; but from these few, as from all other public servants, I would draw as much service as I could. In what respect is the military instrument of domestic peace distinguished from the civil? In being more expert in the business, more efficient, better disciplined, more trained to suffer while it is possible, as well as to act when it is necessary, and in the event of his acting too briskly or too soon, more sure to be forthcoming and made responsible. But if the military, or any other strong and efficient power, is to be employed on any occasion, and against any body, against whom should it be made use of with less scruple, than against felons and their allies?

Is not prevention better than punishment? The better you are seen to be prepared against an attack, the less your danger of sustaining one. Which, then, shews the best countenance against desperadoes and incendiaries—an accidental civil force, or a standing military one? I mean always that sort of standing army which consists of a civil officer commanding a corporal's guard. *Si vis pacem, para bellum*, a maxim but too apt to be abused in matters of foreign politics, is surely in no great danger of being misapplied in the politics of a prison—a sort of monarchy which has never yet been noted for plans of conquest, or aggressive enterprise.

It is a matter of subordinate consideration, but surely not altogether undeserving of attention, that a service like this, of all peaceful services the most resembling a service of defensive war, is, with a view to that sort of war, one of the best schools that peace can afford, of military discipline. Among citizens, what sort of enemy so formidable? and what sort of citizen is it least to be regretted that a soldier should be in the habit of looking upon as an enemy?

Add to this, that the more frequently a guard changes, the less in danger it is of being corrupted. Let the change, then, be made a frequent one: the more it is so, the greater the number of those to whose lot it falls to share the benefit of this branch of military practice.

Would not the parade of military rigour help to impress the minds of men without doors with the idea of hard government?—would it not help to widen the distance between the lot of the persons thus coerced, and the condition, not only of the guiltless citizen, but even of the less obnoxious among malefactors? Would it not in this manner add to the terrific influence of the punishment, without adding to the sufferings of those who undergo it? Surely it would: for, once more, who is there that will deny the effect of scenery upon the eyes of the gaping multitude?*

The military guard thus given to the surrounding wall would not supersede the necessity of an unmilitary *porter* for the gate. Whoever officiated in that capacity ought, for several reasons, to be acquainted with the persons of all who belong to the establishment, and who, as such, may be allowed to pass and repass without examination. He ought likewise to be acquainted with the persons of the prisoners, lest any of them should make their escape in disguise; for instance, by borrowing or stealing the clothes of any of the under officers, or servants, or persons admitted occasionally to work in or about the house.

A centinel, therefore, that is, a soldier continually changing, would not so well answer the purpose. An artisan, whose employment consisted in some sedentary trade—a cobbler or a weaver, for example—might probably be found to accept of it, perhaps without any other recompense than the lodging it would afford;† at any rate for less than what would be necessary to pay him for his whole time.‡

SECTION XVI.

PROVISION FOR LIBERATED PRISONERS.

How to make provision for the prisoners at the expiration of their terms?—how to ensure for the future, with least hardship on their part, with due regard to their respective characters and connexions, and at the least expense, their good behaviour and their subsistence? It is time to be short—here follows a slight sketch.

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* I leave it to the authors of the penitentiary act to insert a common refectory into a plan of rigid solitude. But were I obliged to set the prisoners to eat in common, and like the Kings of Great Britain in former days, in public, it should be (still in pursuit of the same idea) under the guard of an armed party with presented muskets, loaded or unloaded, ready to fire on the first motion towards disturbance. To spectators, the entertainment might shew like that of the tyrant Damocles; but to those who partook of it, the danger would be but show, knowing that security depended upon themselves.

† Gatekeepers are commonly obtained on similar terms for parks.

‡ A fortress thus secured would have a collateral use. In times of riot, it would afford an asylum, where obnoxious persons or valuable effects might be lodged in perfect safety against every thing but cannon—an engine of destruction which has never yet been seen in the hands of any English mob; and it is only from ignorant mobs, even in times of civil war, that an establishment of this nature could have any thing to apprehend.

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I. The prisoner not to be discharged but upon one or other of three conditions:—

1. Entering into the land-service.

2. Entering into the sea-service for life.

3. Finding some responsible householder who will be bound in the sum of [£50] for his good behaviour, by a recognisance renewable from year to year; with a stipulation for surrendering the body in case of non-renewal.*

II. To furnish an inducement capable of engaging not only relations or other particular friends, but strangers, to take upon them such an obligation, authority given to the prisoner to enter into a contract for a term of any length, conferring on his bondsman the powers following, viz.

1. Power of a father over his child, or of a master over his apprentice.

2. In case of escape, powers of recaption, the same as by 17 Geo. II. ch. 5, § 5, in case of vagrants; with penalties for harbouring or

* A set of provisions to this effect being enacted, an establishment of some sort or other would, I take for granted, be set up for the reception of as many of the convicts as either could not embrace, or chose not to embrace, any of the other options.

This subsidiary establishment, I likewise take for granted, would be carried on in a building erected on purpose on the panopticon plan; and no one seems so likely to be the undertaker as the contracting governor of a penitentiary-house upon the panopticon plan, as giving him every facility for getting the most work done, and making the most of that work. It would be worth somebody's while, because the convicts, having by the supposition no other course of life to betake themselves to, or none they liked so well, would serve on so much the cheaper terms. It would be better worth the governor's while than that of anybody else, because experience would have taught him how to apply the panopticon principle in the way of management to the most advantage, pointed out to him a profitable mode of employment, and shown him the precise worth of each man's labour. It would be better worth his while to set them to work in a separate panopticon of his own erection, and upon such terms as he and they could agree upon, than to have them continue on the footing of *remanents* in the penitentiary panopticon, with head-money to be paid him by government, on the same footing as at first.—Why? Because every such *remanent* would occupy the place of a prisoner in ordinary. The more he had of the former, the fewer, therefore, (if the number of such *remanents* were at all considerable) he could have of the other: whereas, upon the supposition of a subsidiary panopticon, the more workmen he could get to employ in it upon such advantageous terms, the greater would be his advantage. Engaging his workmen, too, for the subsidiary establishment for a considerable and certain term, he could depend upon them, and make his arrangements accordingly: whereas no *remanent* could be depended on for two days together; since at any time he might, for aught the governor knew, find some friendly bondsman, or at any rate embrace one or other of the other options. This uncertainty I keep up on purpose; lest in case of a deficiency in the number of the prisoners in ordinary, the governor, for the sake of the head-money, should make it worth the while of a prisoner, whose term was expired, to stay in upon the footing of a *remanent*, and thus continue a burthen to government, rather than embrace any one of the other options.

Why not oblige the governor, by a clause in his contract, to take *remanents* at a reduced price? Because nothing would be saved by it. Antecedently to experience, the governor could not be sufficiently assured in what degree, if in any, the labour of a convict would, upon an average of all the convicts, be more valuable at the expiration than at the commencement of his term: the more, therefore, he abated upon the *remanents*, the higher he must charge upon the prisoners in ordinary. It is on that account that my object is as much as may be to get rid of *remanents*, so that, if possible, there shall be none, except in the case of a man who has neither ability to pay an employer for his subsistence, nor friend, nor parish—a case which is likely to be extremely rare.

I had rather the penitentiary governor should get the emancipated prisoners in this way, than any other undertaker, whom the view of profit, and not any particular connexion with, or friendship for the prisoner, might induce to bid for him. Why? Because the governor is by this time a tried man in every respect, as well as a responsible one. It is on this consideration I view with satisfaction, rather than regret, the advantage he will have over any other master in treating with them, before the expiration of their terms. At the same time, I do not exclude other bidders. Why? Because such a monopoly would be a hardship on the prisoners, and that a needless one.

Considered as a fund of recruits, the penitentiary-house would be an economical one. What will be styled in boatswain's or recruiting serjeant's language *liberty*, and what, if it is to be called *servitude*, is at least an honourable one, may stand instead of *bounty-money*. The more irksome the civil subjection has been felt among a class of men distinguished at one time, at least, by their aversion to ordinary labour, the more likely they are to be caught by the bustling gaiety and frequent indolence of a military life. As a school for recruits—as a nursery for a profession in which everything depends upon obedience, what can equal an establishment in which, for a course of years disobedience has been impossible.

Can the source be objected to as a stain upon the service? Not surely by any one who can think with patience of the methods in which so large a portion of both departments has been habitually filled up under the present practice. On the present footing, in what state are criminals received into a service of which honour ought to be cherished as the vital principle?—when the marks of depravity and its attendant ignominy are fresh upon their heads: how under the proposed arrangement—after the guilt has been expiated—the moral disease cured, and the ignominy washed away by a course of purification still more public than the offence. I would go farther: I would draw a marked line between these recruits and others, nor admit the stigmatized upon an equal footing with the irreproachable, till after a term of additional probation gone through in the army itself, and a ceremony reinstating them in solemn form in the possession of lost character.

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enticing, as by 5 Eliz. ch. 4, § 11, in case of persons bound, for want of employment, to serve as servants in husbandry.*

3. The contracting governor of the Panopticon penitentiary-house to be bound to keep the prisoner there, after the expiration of the term, though it should be for life, until discharged in one or other of the three ways just mentioned; and that upon terms, at any rate, not exceeding those on which he would be bound to receive a fresh prisoner:—and so in case of surrender by a bondsman.

4. The prisoner's parish to be bound, in such case, to give the crown an indemnification, not exceeding the utmost amount of the charge borne by reason of any pauper by that parish.†

5. The bondsman to be bound for the *maintenance*, as well as the good behaviour of the liberated prisoner, during the term of the engagement.‡

6. The governor of the penitentiary-house to be bound, on failure of the particular bondsman, to the extent of half the penalty specified in his recognisance in case of forfeiture.‖

7. The governor bound also, on such failure, for the prisoner's maintenance; but without being obliged to grant him relief on any other terms than those of his returning to the penitentiary-house, or engaging in his service for such time as shall have been agreed on.

8. Such bondsman's recognisance to be taken before justices in quarter or petty sessions, with power to the governor to oppose and cross-examine, as in the King's Bench in case of bail.

9. The recognisance to be registered with the clerk of the peace, and annually renewed: upon failure of renewal, the responsibility of the governor to revive, and with it the power of recaption.

10. Power to the governor and the prisoner to enter into a contract of engagement for any number of years, and that before the expiration of the term, subject to attestation before a justice, as in case of enlistment, and examination touching his consent, as in the Common Pleas in case of a *feme covert* joining in the disposal of an estate.

11. In case of dispute between the governor or any other master-bondsman and any such servant, justices to have cognisance, as at present in case of servants in husbandry.§

* The stronger these powers, the easier it will be for the convict to find a master to his choice. Any one who, from relationship or any antecedent connexion, might be induced to stand bondsman to him without making advantage of his service, will be equally at liberty to do him the friendly office: and the better terms he is enabled to give, the better he will be able to make.

† No hardship on the parish: the burthen is no more than would fall on them of course: it gives them a chance of relieving themselves which they have not at present. The case of a *remanent* too helpless to do anything at all for his subsistence will be extremely rare. Whatever he is able to do, the governor knows by experience, and can take him off the hands of the parish upon terms mutually advantageous. A trade which, having been carried on in a panopticon penitentiary-house, might be carried on with equal advantage in a subsidiary establishment conducted on the same principle, might be incapable of being carried on in a parish workhouse.

‡ Otherwise he might give himself up to idleness, turn beggar, or throw himself upon the parish. The bondsman, when he had once procured the convict his liberty, might care little what became of him, so long as he kept from such offences as would operate a forfeiture of the recognisance, or committed them at a distance where his identity was not known.

‖ If no provision were made for scrutinizing into the bondsman's responsibility, members of gangs might become security for one another, as swindlers lend one another their names to bills. Such particular bondsmen being so many competitors of the governor's, generally speaking he would, it is true, have a natural interest, even without this artificial one, in opposing improper bondsmen. But such natural interest would be less and less, the less valuable a workman the convict were, whether through moral or natural infirmity. Besides that such a scrutiny, if it were not thus made the governor's duty as well as his interest, would be an invidious task. What is more, it is in this way made his interest that whatever reformation is effected in the behaviour of the convict by the penitentiary discipline, should be not merely apparent and temporary, but real and lasting.

To induce him to take upon himself all this responsibility, some allowance must be made him: but the degree of power given by the panopticon plan, and the confidence he will naturally have in his own care and skill in the application of that power, will render it unnecessary to be very liberal. Records or other documents will show the proportional number of instances in which a convict, after having been discharged from the hulks, has been prosecuted for any subsequent offence.

In case of a crime operating to the detriment of an individual, the forfeit, to the extent of the damage, might be applied to the purpose of indemnification—an object sadly and almost universally neglected by the criminal law. Prosecution for the forfeiture would thus, too, be rendered more certain. Recognisances to the crown are often of no effect, for want of an individual whose interest it is to prosecute.

§ The necessity of periodical renewal keeps alive the dependence, and with it the security. Honour and gratitude are ties too feeble for the law to trust to, where so much surer may be had, especially in the instance of such a class of men. Thus circumstanced, a man will avoid not only punishable misbehaviour, but idleness, drunkenness, begging, vagrancy—anything which can lead to such misbehaviour, or excite an apprehension of it. Moreover, the shorter the term, the less the bondsman's risk: the less, therefore, the difficulty of obtaining one—another instance of a provision beneficial at first view to the bondsman alone, but in effect still more so to the convict.

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12. Any such contract so made with a prisoner, not to give him a fresh settlement.

13. Power to government to remove to his parish any such *remanent* remaining on the penitentiary establishment after the expiration of his term.*

14. Power to the parish to bind over to the governor a remanent removed, or liable to removal; and that for a term not exceeding seven years in the first instance, nor one year ever after.

Is there anything wanting in the provision made by this plan?—anything to public *security*, to *economy*, to *humanity*, to *justice*?

The *securing* the public against the future ill-behaviour of a discharged convict has hitherto been looked upon as a problem, insoluble except by death, or some other punishment which, under the name of a temporary, should be in effect a perpetual one. The idea of absolute incorrigibility is accordingly the idea which, in many an estimate, stands inseparably annexed to that of a thorough-bred London felon. Be it so: upon this plan, be he ever so incorrigible, the public will have nothing to fear from him, since, till he has given satisfactory proof to the contrary, he will not be let loose. When a suspected person is put under the care of a boatswain or a recruiting serjeant, the public peace, as far as he is concerned, is universally looked upon as sufficiently provided for; and the great diminution thereby supposed to be effected in the proportionable number of crimes is reckoned upon as no inconsiderable compensation to set against the miseries of war. But to put even this security in competition with that which is afforded by the Panopticon discipline, would be doing the latter great injustice. The security afforded by the military discipline, or a still better—such, then, is the assurance which the public obtains of the good behaviour of every individual who has gone through his term in a panopticon penitentiary-house; such alone excepted, for whom the affection of friends may have found particular bondsmen, and who, by the confidence thus reposed in them, have given proofs of a degree of trust-worthiness sufficient to place them, in this respect, on a level rather above than under that of the ordinary run of men.

Will reformation, inward reformation, be, or not be, the result of such a course of discipline? My own persuasion, my full persuasion, and I hope it is not too sanguine a one, is, that with very few, or perhaps no exceptions, it will be found to be so; and that at any rate, in such a period as that of seven years, the very disposition to mischief will be found to have been subdued. But should even the disposition remain, the ability will, at any rate, be chained down; and so long as that is the case, how it is with the disposition, is a question which, to every temporal purpose at least, it is as immaterial as it would be difficult to resolve.

As to *economy*, the terms on which a man is subsisted cannot in any instance be more disadvantageous to the public than on the present footing; and no bounds are set to the reduction of the disadvantage.

Is there anything wanting in the attention paid to the particular circumstances and feelings of individuals? Merely for want of employment, persons to whom no guilt is imputed may, by the statute of Elizabeth, be forced into service in husbandry, or, by the custom of pressing, enforced by occasional laws, into one or other branch of the military service; and in both cases without any option as to the employment, much less as to the employer. Here, no fewer than four options are given to convicts—options, too, which extend to the very person of the employer. Men accustomed to a style of life superior to that of the common run of those who are obnoxious to this fate, would, under a punishment nominally the same, suffer more than their comrades in effect. Such persons may, by the generosity of a disinterested bondsman, find themselves clear of every obligation of service. A father may thus rescue his son, an uncle a nephew, a brother a brother, from the hardships of a degrading servitude. Independently of such contingencies, prisoners who have either brought a general good character into the house (for even such will not be altogether wanting,) or acquired one there, and are either able to get a livelihood, or provided with friends who would furnish them with one, will be sure of bondsmen: and the faculty of investing the bondsmen with such ample powers will

* To prevent remanentcy by collusion betwixt the governor and an able-bodied convict: If the allowance made by government for remanents is greater than what it would cost the parish to maintain a man in their workhouse, they will remove him thither of course: and the consideration of being subjected to such removal will prevent a lazy convict from throwing himself unnecessarily on his parish, where, if he could be maintained in idleness, he would naturally be disposed to live. If the governor, or whoever else sets up a subsidiary panopticon, finds it worth his while to take charge of the convict for a less consideration or for nothing, the parish will in proportion be eased of the expense. By this plan, the burthen to the public can scarce in any instance whatsoever suffer an increase: and the probability is, that upon the whole it will be much diminished. The only possibility to the contrary is the case of a remanent convict who is at once parishless and helpless. But this case cannot be a frequent one, and the governor being eased by his helplessness of all fears from his unruliness, can hardly insist upon any advance in his terms on binding himself in his contract to provide for all persons so circumstanced at parish price.

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render it so much the easier for the prisoner to find one. The more valuable a member of the community he is become in all respects, the better will his condition be, since he will find employers bidding against one another to obtain him.

Suppose him, for want of particular friends or connexions, engaged with the governor or some other undertaker in a subsidiary panopticon: in what respects would his condition differ from that of ordinary service?—only in the engagements being for a longer term, and putting it out of the power of the servant, by absence or intoxication, to deprive the master of the benefit of his service. In these circumstances, a variety of indulgences would naturally take place: abatements would be made in the number of working-hours; a curtain would guard the times of recreation and repose from the importunity of an inspecting eye; every seventh day would be a day of perfect liberty; the comforts of matrimony would in this situation at any rate lie within reach;—in short, instead of being termed a state of confinement sweetened by indulgences, the justest as well as simplest point of view in which it can be considered is that of a state of free service, only somewhat better guarded than ordinary against misbehaviour and abuse.

I hear an objection—"Your subsidiary panopticon is a receptacle for manufacturers working in numbers under a common roof, and such receptacles are found by experience to be nurseries of vice. The manufactories, the only manufactories favourable to virtue, are the dispersed, the rural manufactories—those which spread themselves over the face of a country, and are carried on in private families by each man within the circle of his little family, in the bosom of innocence and retirement." Be it so: it may be so, for aught I know. But how great the difference, or rather how striking the contrast, betwixt an ordinary manufactory and one carried on upon the panopticon principle! Is there anything in the air of the country or in the structure of a cottage that renders it inaccessible to vice? is the connexion betwixt virtue and secresy so exclusive? No: the advantage which the domestic manufactory has in this respect, over the most public manufactory, is not to be compared with that which the panopticon discipline has over that of the purest of all manufactories upon every other plan, public or private. In what other house, public or private, can equal security be found for the fidelity of the married, for the chastity of the single, and for the extinction of drunkenness, that murderous infatuation, in comparison of which every thing else that goes by the name of vice is virtue?*

How is it that in public manufactories vice insinuates itself? How? How but for want of the inspecting eye of some one who has the power, and may be made (if he has not already) to have the inclination to suppress it? With respect to drunkenness, above all things, is it possible that such inclination should be wanting to any master?—of all others, to the master of an indented servant? The drunkenness of the servant is the master's loss: what the one suffers in his health and morals, the other suffers in his purse.

This plan is not altogether so simple as I should have been glad to have found it: but simplicity, though it ought never to be out of our eyes, is not always in our choice. There are other plans, which, at least as far as concerns the option—I should say the no-option—given to the convict, are much more simple: but I leave to whoever is ambitious of it, the praise of purchasing simplicity at the expense of economy, good morals, humanity, and justice.

A plan is good or bad, either simply with relation to the end in view, or comparatively with relation to others directed to the same end.

The end in view here is to ensure the good behaviour and subsistence of convicts after the expiration of their punishment, regard being had to economy, humanity, and justice. If perfection be still at a distance here, shall we find anything nearer to it in the colonization scheme, or the penitentiary act?

Out of 687 convicts, sent to a country from whence return without assistance from government is known to be impossible, 20 had been sentenced for 14 years, 630 for 7 years, 12 but for 5 years (tenderness for the tender sex dictated the limitation here,) 35 only, little more than a twentieth of the number, for life.† Was it the intention that, at the expiration of these terms, vessels should be sent out to give effect to the limitation in the sentence? If so, what becomes of the security? and what are we to think of the expense?‡ Was it that they should be left

* To possess a just and adequate conception of the powers of the inspection principle, requires a deeper insight into its nature and effects, than can be expected, perhaps, from any one at first glance. So long as this perfect conception has not yet been formed, objection upon objection may be expected to arise. Many such I have accordingly heard: but none against which a maturer view of the subject would not have shut the door.

† From the list at the end of Governor Philip's Voyage.

‡ A hint has been given of the utility of a panopticon penitentiary-house as a nursery for military service. How useful it might be more in the same capacity to the colonization scheme. In this case, the trades the prisoners were employed in, and the instructions of all sorts they were made to receive, might be adapted to that object, and made subservient to their final destination. Every embarkation supposes an abode of at least six months upon an average, in some

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fixed for life on the spot to which they were consigned with such nicety of discrimination, for fourteen, seven, and five years? If so, what is the sentence, or the pretended execution of it, but a mockery of justice?*

Suppose them brought back: what is the provision for them then? None; no more than if they had never been sent there. Suppose them to stay: what is to be the lot of such of them as become chargeable — I mean supposing the time come when there can be any that are not chargeable? Either they are left to starve, or Great Britain is their parish, though they cannot be removed to it. Will their maintenance there cost less, at the distance of seven months sail, than at home? — in a country which has nothing, than in a country which has every thing?†

So much for the colonization scheme: what says the penitentiary act?

Decent clothing; — money in a man's pocket — for a year not more than £3, nor less than 20s. — for a shorter term in proportion; and if anybody will *talk* of finding employment for him, and he has behaved well, more money to the same amount at the year's end.‡

From twenty to sixty shillings at a year's end? What is that to do? how is it to find a man employment? No employment without an employer: how is it to give him one? what inducement does it hold out to anybody to take upon him that friendly office? None; no powers — no factitious security of any sort, to supply the natural want of confidence. Were employment offered, what obligation, what *inducement*, to *accept* of it? They may choose to become beggars, not to say thieves — and what is there to hinder them? If the fear of starving on the spot will not force a man to work, will a few shillings to be received at a year's end bribe him to it? For whose *sake* should anybody furnish the employment? — for his own? The act gives him no motive. For the convict's? No; nor in that way neither. If he will not to save him from starving, will he for the sake of getting him a few shillings, which he is not to have till it has been proved that he can do without it? Of what *kind* is the employment to be? — one that requires no *confidence*? The allowance is not wanted: why throw away so much money? If a man has gained an honest livelihood for a year together, what

intermediate receptacle: for embarkations neither have taken place, nor probably will take place, oftener than once a year upon an average. What a contrast, in this point of view, between a penitentiary panopticon and the hulks! and for the female sex, between the industry and purity of such an establishment, and the idleness and profligacy of a common prison! Bibles and other books are sent out with pious care for the edification of these emigrants, when arrived at their land of promise:[a] but what are Bibles to unlettered eyes? In a preparatory panopticon, they might be initiated not only in the art of reading, but in the habit of applying such their learning to a pious use.

* The House of Commons, when the information laid before them has been perfected and digested, will, it is to be hoped, inform us.

Already there are many, as appears by the above list, whose term has been upabove a twelvemonth, and it does not appear that any steps have been taken towards rendering their return possible.

As their times are expiring all the year round, supposing ships to be sent out for this purpose but once a-year, which is as often as they sail at present for that country, the addition thus made to the term specified in the sentence, would, even on this supposition, be six months upon an average. But, compared to *false imprisonment* (to use the law phrase) or rather *false banishment* for life, which seems to be their present doom, an oppression of the same kind for no more than six months is scarce worth mentioning.

† Vessels used not to be sent for the re-importation of convicts after transportation to America. — True: neither was there occasion: returning thence was but too easy, and that was the great grievance.

If, instead of being sent to New South Wales to be kept for life at the rate of £60 a-year a-head, they had been set down upon a barren rock to starve, would it have been said that there was nothing unjust in this, because there was no law forbidding them to buy food, or forbidding others to supply them with it? Would an illegal prohibition opposed to the right of return be a greater injustice than a physical impossibility?

[a] See Papers laid before the House of Commons in 1791, relative to the settlements in New South Wales.

‡ According to the best calculation I can make, the present expense per head may be reckoned at about £60 a-year — an expense the total cessation of which may be demonstrated to be impossible, and in which any considerable degree of reduction is an event which after three years trial seems at a distance as indefinite as ever. The provision made for a gentleman in a situation of great trust is in many instances (that of a clerk of the Bank for example) not equal to it.

The present is not a place for a full examination of the New South Wales colonization scheme. I will only mention the result, which is, that supposing the adoption of the panopticon plan, the cheapest as well as the best course in every point of view that could be taken, would be to send a fleet, and re-import the whole colony at once: that the next best course would be to confine the future exportations to those who were sentenced for life; and among those, if colonization, that is propagation, be the object, to limit the males to a number proportioned to that of the females capable of child-bearing, that is, exceeding it in the ratio of no more than about one-twelfth or one-thirteenth.

It is but justice all this while, to whoever was the author of this plan, to observe, that he had not the option of a panopticon before him, and that with regard to the important branch of security here in question, his is as efficacious as we shall find that of the penitentiary act to be otherwise.

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should hinder his continuing to do so? Is *confidence* necessary? the allowance is of no use. Will the one, two, or three pounds, the convict is to have a year hence, render him trustworthy to-day, in the eyes of any one to whom he would not appear so otherwise?

One man is fortunate enough to have connexions: another man has none. The one gets a friend to *say* he will take him (for as to engagement it is out of the question;) the other, not. Both live out their year with equal honesty. Why is the former to have all that money, and the latter none of it? why give him who has most merit nothing, while you pay the other for his good fortune? Let him who has the happiness to have friends enjoy the benefit of their friendship: but is he to be rewarded for it too, and that at the public charge?

Decent clothing—so far, so good—a man is not to be turned out naked. But all that money in his pocket—as soon as he is out of the house, what is that for? Is it to furnish him with a few other necessaries besides clothing, such as bedding, household furniture, and tools? One would think so. But if so, how comes the allowance to be pared down and reduced in the inverse ratio of the time he has passed in prison? Will a shorter bed or a smaller table serve a man who has been there but half a year, than him who has been there a whole one? One would think the foundation of the act in this part were the supposition of its own injustice; and that the money, instead of *equipment*-money, were meant as *smart*-money. "Poor fellow! You have suffered so much more than such an one: here is so much more for you, to make you amends."

Set a beggar a-horseback, and the proverb tells you where he will *ride*. Is the beggar likely to prove the more prudent horseman for having been bred in the school of felony? The penitentiary act sets a whole regiment of such beggars on horseback, and it gives them no master to hold the reins. Men who have given such testimonies of themselves, surely are not much injured in being compared to school-boys. Can prudence, can economy, be expected generally to prevail during the ecstasy that will so naturally mark the period of emancipation? Is not the idlest school-boy he who has the heaviest pocket? What parent, instead of giving the quarter's board to the master, would give it to the child? *Light come, light go*, says another proverb, not more familiar than true: the same sum, collected by a man's own economy, might hope for a better fate.

These little pecuniary allowances do not strike at the root of the difficulty—they do not apply to the right person. In the convict, you see a man in whose breast the passion of the day is accustomed to outweigh the interest of the morrow: in the contracting governor, you have a man who knows what his lasting interest is, and is in the habit of pursuing it.

The means he may have of exercising a desirable influence on the behaviour of the convict, are as powerful as heart can wish: make it his interest to exert that influence, and the object is attained. This man, whom you know, is the man to deal with, and not the convict, of whom you know nothing but what is to his disadvantage. With the latter, it is all *nudum pactum*—all giving, no receiving: you can stipulate nothing, you can depend upon nothing in return. Strike your bargain with the contracting governor, you have some ground to stand upon; you can get an indemnity in case of disappointment: if your discharged prisoner turns out honest, the object is attained; if otherwise, you get your money back again with interest.

Nothing can be more laudable than the humanity which dictates the provision we have been examining; the misfortune is, that so respectable a motive should not have pitched upon happier means.

The following Note respecting this Work was given by Bentham to Dr. Bowring, 24th January 1821.

THE Plates referred to in this work were destroyed by a fire at the printer's.* An improved plan of construction is shown in a small plate inserted in the work entitled "Pauper Management improved."

The main body of the Panopticon was sent to the press at Dublin by Sir John Parnell, at that time Chancellor of the Irish Exchequer. Sir John Parnell tried in vain to obtain the adoption of the plan in Ireland. Mr. Pitt, with his colleague Mr. Dundas (afterwards Lord Melville,) laboured, and with like success, in England. The design of building a Panopticon prison lingered from 1791 to 1813, when, by the erection of another prison, without any of the advantages, and more than ten times the expense, it was finally extinguished. George the Third was inexorable. He had been irritated at the author by the

* In note †, p. 67, it is stated that the Editor has been unable to obtain a copy of the Plates. Since that sheet was thrown off, they have been fortunately discovered, and appear in this edition. For reasons which the text sufficiently explains, it has been deemed unnecessary to give the more imperfect plan in Plate I.

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guished. George the Third was inexorable. He had been irritated at the author by the Plan for the Judicial Establishment in France; and before that, *anno* 1789, by two letters in a morning paper signed Anti-Machiavel, written against the war in which the King laboured without success to engage the nation against Russia. To the first of those letters appeared an answer, which the Earl of Shelburne, who had been Secretary of State, and after that Prime Minister, and at that time had his connexions in the King's family, gave the author to understand was written by the King himself.

After delays upon delays, an act of Parliament was passed, by which the faith of Parliament was pledged to the author for the adoption of his plan; and at last, in 1813, another act to authorise the violation of that pledge. To prepare for this violation, a Committee of the House of Commons had been got up by the Secretary of State, Lord Sidmouth. The plan had been recommended by the famous Finance Committee of 1797–8, of which Mr. Abbott, afterwards Speaker, now Lord Colchester, was chairman. A contract had been entered into, and in consequence the author put into possession of a spot of land. For the commencement of the business, the signature of George III. was necessary; after an unexampled delay of three weeks, that signature was at length peremptorily refused. The official correspondence on the subject would fill a volume. To the all accessible and inspectable prison in question, Lord Sidmouth has substituted a Bastile, not to be visited, without his order, even by constituted authorities.

While nations consent to put into any hands an uncontroulable power of mischief, they may expect to be thus served.

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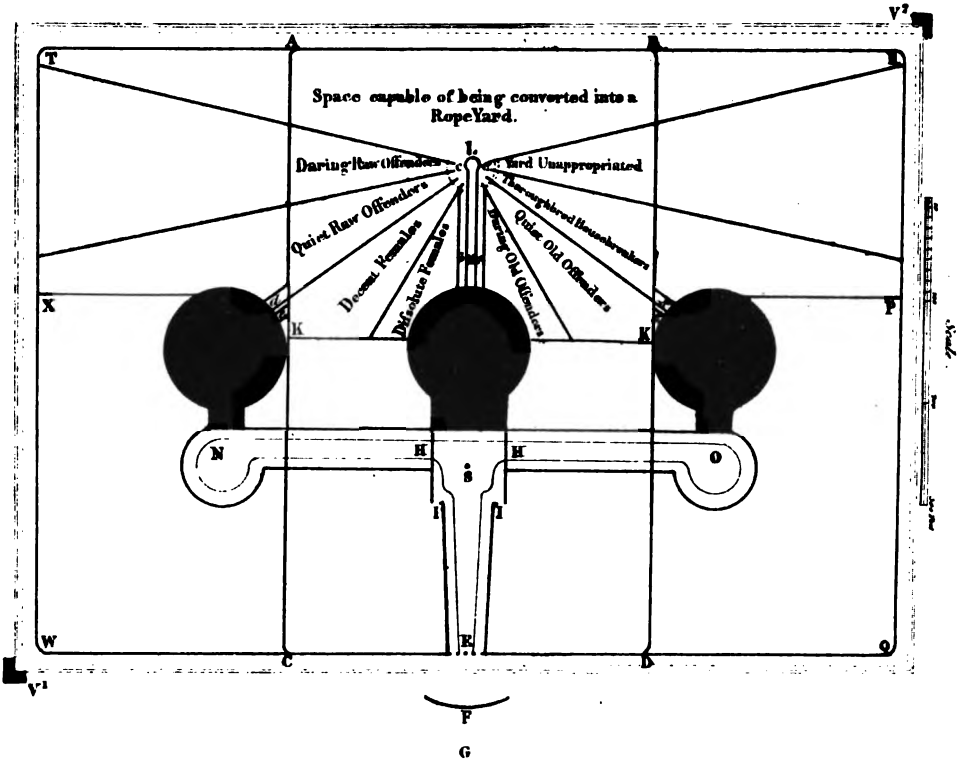
A PLAN exhibiting the idea of a mode of Fortification adapted to Prisons: containing — 1. Mode of forming the Approach; 2. Application of the Inspection Principle to the External Area attached to a Panopticon; 3. Mode of guarding against attempts on the surrounding Walls; — also representing the mode in which three Panopticons might be connected under one Establishment.



EXPLANATIONS.

I. APPROACH.

A B C D represents a PANOPTICON, with the area belonging to it, inclosed by a general surrounding wall.

E, the Approach; contracted at the entrance, that it may be the more easily guarded by a sentinel or gate-keeper. Next to him is a small Gate, opening into a Foot-path; next to that a larger Gate, at which carriages are to enter; then a similar one at which they are to go out; beyond that again, a Footway, into which no opening is made, as being too far from the gate-keeper's station to be under his guard. The gates may be of iron, in order to be seen through from the house; and ten feet high, so as not to be climbed over but with great difficulty: to increase which, they might be crowned with a broad projecting coping.

S, a Lamp-post, or some such object, by way of central mark to direct carriages in turning.

I I, Two Gates, one on each side of the Approach, opening into the part of the area allotted to exterior offices, and officers' gardens. They are of iron, that they may be seen through from the house.

F, a Wall, serving, in case of an attack, to guard the country behind from the fire of musquetry from the house.

Between E and F, the ordinary Road.

Between F and G, a branch of the road, by which peaceable passengers may pass under shelter at the time of an attack.

II. OUTLETS.

A B K K, Space allotted for Airing Yards, to exemplify the mode of marking out divisions for the reception of different classes of prisoners. — *N. B.* It is not supposed that so many would be necessary; the number here given is put only by way of example.

L, a Look-out or Inspection Lodge, from whence a single inspector may inspect all the yards.

M L, a Covered Way, through which an inspector may pass from the building and back again, without the knowledge of the prisoners.

C C, Circular Yard, encompassing the look-out, and affording a common approach to all the yards.

A C, Uncovered Passage for the Male Prisoners to the central yard.

B C, Ditto Ditto for Females to ditto.

Between the walls are iron gates, not so high as to impede in any degree the inspectors' view. The partition walls project beyond the gates into the central yard, to prevent prisoners in different yards from holding converse.

F K C D, Space for Exterior Offices and Gardens.

III. MODE OF GUARDING ON THE OUTSIDE.

V¹ V², Two Guard-houses, each flanking the paths of two sentinels. That towards the yards (V²) might have a storey so high as to command them; and it might have a communication with them not to be used but in case of alarm: for instance, by an underground passage, opening into the commanding officer's apartment, or by a ladder kept under lock, he alone keeping the key.

To prevent all converse, however distant, between the soldiers and the prisoners, it should have no windows looking out into any part of the yards; for which reason it is also detached from the wall, and placed at the greatest distance from the female prisoners.

The double line encompassing the surrounding wall, represents a slight Pallisado, to prevent passengers from approaching the wall without putting themselves into the predicament of delinquents. The dotted line represents the Walks of the sentinels: each walk is extended in such manner as to cross and flank two others, that each sentinel may have two others to check him.

IV. JUNCTION OF THREE PANOPTICONS.

N H O, Road forming the communication between the central and two lateral Panopticons. — *N. B.* In this case the walls H H, as to that part of each which crosses and blocks up the road, must be conceived to be away; as also the whole of the walls A C and B D.

A K X T, Additional Space for Airing Yards, upon the supposition of a second Panopticon.

B K P R, Ditto, upon supposition of a third ditto.

d. e. f. g. Communications for the second and third Panopticons with the Look-out L, similar to those from the first. (*N. B.* It is to prevent confusion, that they are thus cut off in the draught.) Had they been projected straight forward, like those from the first, they could not have joined the look-out without being bent towards it in an angle, which would have concealed more or less of the area from the inspectors' view. It is to avoid the same inconvenience that the walls at X and P are brought forward almost to a tangent to the circle, instead of being placed nearer to the diameter; for example, in the same direction as the walls K K.

X W C, Additional Space for Offices and Gardens, upon supposition of a second Panopticon.

P Q D, the same, upon supposition of a third Panopticon.

N. B. — The walls should all of them be rounded off at their junctions, as at T R Q, &c., to avoid giving the assistance which angles afford in climbing.

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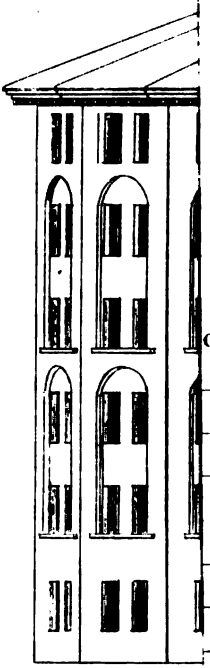
791). Unfinished State.
No 2).



EXPLANATION.

Cells

C. Great Annular Sky Light

Cell Galleries

Entrance

Inspection Galleries

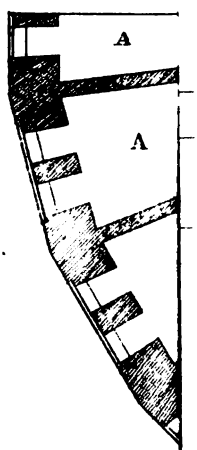
Chapel Galleries

Inspector's Lodge

Dome of the Chapel

Sky Light to D.º

Store Rooms &c. with their Galleries; immediately within the outer wall all round, place for an annular Cistern Q



Floor of the Chapel

Circular Opening in d.º (open except at Church times), to light the Inspector's Lodge

Annular Wall from top to bottom, for light, air, and separation.

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PANOPTICON *versus* NEW SOUTH WALES:

OR,

THE PANOPTICON PENITENTIARY SYSTEM,

AND

THE PENAL COLONIZATION SYSTEM,

COMPARED.

In a Letter addressed to the Right Honourable Lord Pelham.

BY JEREMY BENTHAM, OF LINCOLN'S INN, ESQ.

MY LORD,

THE letter of which these printed pages form a part, was begun in the view of its being submitted to your Lordship in manuscript. Destined to represent the treatment experienced during a period of eight or nine years from the servants of the crown, by a plan that has twice at their own solicitation received the sanction of parliament — (the second time, after urgent reasons given by the committee on finance for the continually professed execution of it, and no reasons ever given by any body for the suspension of it) — the history had advanced to that stage, in which, for the first time, a disposition to "relinquish" the plan now termed a "project" (after a contract drawn, and land purchased in execution of it) — degraded thus from a plan to a project — had been avowed. Now, lately having, through an authentic channel, received intimation of an intention on your Lordship's part to "converse on the subject with the Lord Chancellor and the Judges;" it occurred to me, that whatever opinion, if any, were eventually to be obtained from any such high and ever revered authority, any such opinion would not be the less instructive, if in this, as in other instances, it were to have had the opportunity of grounding itself on such evidence as the nature of the case afforded.

After this explanation, I proceed to submit to your Lordship that part of the originally intended address which bears more particularly upon the point in question, detaching it on the spur of the occasion from whatever was originally designed to precede or follow it.*

Fourth and last ground for the *relinquishment* of the Penitentiary system: "*The improved state of the colony of New South Wales.*"

Of the three other grounds† the inanity has been displayed: there remains this single ground to bear the strain of the whole measure — I mean, not of the penitentiary establishment, but of the *relinquishment* of it.

To justify the predilection shewn for the distant establishment, and the use thus made of that predilection, those who have taken upon themselves to make this collateral use of it, have two propositions to make good:

1*st*, That of the two rival modes of punishment — the punishment by transportation to New South Wales, and the punishment by confinement under the intended penitentiary establishment — the former is the preferable one.

2*d*, That it is to such a degree preferable, as to justify the laying aside the other altogether, and inclusively the imposing on the public that expense — expense in all its shapes — money, public faith, character of public men — with which the ultimate sacrifice of the thus long suspended establishment would be attended.

The first proposition is the leading one: in this is contained the principal point in issue: this being determined in the negative, the other will be superseded. How, then, shall it be tried? by analytical investigation, sup-

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* The relinquishment here in question was hypothetical, and but hypothetical, in form, though hitherto it has been categorical in effect.

† The three other grounds were — 1. Lapse of time; 2. Increase of terms, meaning thereby, of public expense (an increase barely proposed, and studiously forborne to be insisted on;) 3. Improvements observed to have been made in some of the existing gaols. Of two of these grounds, a recapitulatory glimpse may come to be given in the course of the present pages, under the concluding head of Economy.

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ported by specific evidence? or by vague assertion, supported by a few customary phrases? "In the former mode, certainly," says a voice, which I recognise for your Lordship's, being that of reason and justice — by the former mode, as being the only true one, how far soever it may be from being either the more generally commodious of the two or the more usual.

The two rival systems in question being systems of punishment, whichever of the two is the preferable one, must be that which will prove to be so on joint reference to the several *objects* or *ends* of penal justice.

Objects or ends of penal justice, five:

1*st*, *Example* — prevention of similar offences on the part of individuals at large, viz. by the repulsive influence exercised on the minds of bystanders by the apprehension of similar suffering in case of similar delinquency.

2*dly*, *Reformation* — prevention of similar offences on the part of the *particular individual* punished in each instance, viz. by curing him of the *will* to do the like in future.

3*dly*, *Incapacitation* — prevention of similar offences on the part of the same individual, by depriving him of the *power* to do the like.

4*thly*, *Compensation* or *satisfaction*, viz. to be afforded to the party specially injured where there is one.*

These four from Blackstone and from everybody: to these four I will venture to add a fifth, *Economy*. The four first, *direct* ends — ends to which the several measures adopted ought to tend in a direct course; the last, an *indirect* or *collateral* end — a mark which, though not the direct object of any such measure, ought not to be departed from to any greater distance, than the pursuit of the other direct ends shall be found to render unavoidable.

The list of these objects belongs to the A B C of legislation: if the application of it to practice had been equally familiar, your Lordship will judge whether it would have been possible the country should ever have seen any such establishment as Mr. Pitt's and the Duke of Portland's "improved colony of New South Wales."†

Assuming these five to be what without dispute they ought to be, the common objects of both systems, let us consider each object by itself; and calling in the two systems, one after another, hear what each promises to perform, or may be considered as having performed, towards the attainment of that common end.

I. First object — *Example* — prevention of future offences by means of it. What, in the first place, is the course taken for this purpose by the *colonial*, the *transportation* system? The convicts and their punishment are removed by it to the antipodes, as far as possible out of the view of the aggregate mass of individuals, on whose minds it is wished that the impression should be made.

What is the course taken in the same view by the *penitentiary* system — *Scene of punishment*, the vicinity of the metropolis — the very spot which contains the greatest number of spectators of all descriptions, and in particular of those in whose instance there is the strongest reason for wishing that the impression may be made.

Plan of management — such as has for its object the pointing the impression by all imaginary contrivances to this end, the strengthening it by all apposite means, the multiplying by every imaginable device the number of the visitors and spectators — a perpetual and perpetually interesting drama, in which the obnoxious characters shall in *specie*, at any rate, be exposed to instructive ignominy, the *individuals* being with equal facility capable of being exposed to it, or screened from it, as, in the judgment of those to whom it belongs to judge, may be deemed most eligible upon the whole.

II. Second object — *Reformation*. Under this head, what, in the first place, does the "improved colony?" Delinquency, in the case of offences in general, and the class of offences here in question more particularly, may be considered as having for its positive and primary cause, a sort of morbid sensibility with reference to those enjoyments and those sufferings or uneasinesses, the pursuit or avoidance of which have respectively given birth to the offence. It may be considered, again, as having for its negative and secondary cause, the absence of those peculiar appropriate restraints, from which, had they been present, that vicious propensity might have received an efficacious check. Delinquents, especially of the more criminal descriptions, may be considered as a particular class of human beings, that, to keep them out of harm's way, require for a continued length of time that sort of sharp looking after, that sort of particularly close inspection, which all human

* Of all these ends, *example*, be it observed, is beyond comparison the most important. In the case of *reformation*, and *incapacitation* for further mischief, the parties in question are no more than the comparatively small number of individuals, who having actually offended, have moreover actually suffered for the offence. In the case of *example*, the parties are as many individuals as are exposed to the temptation of offending; that is, taking the character of the delinquency in the aggregate, the whole number of individuals of which the several political communities are composed — in other words, all mankind.

† The words used in the secret correspondence between the two offices — Documents dated 13th August 1800; 25th August 1800; 17th March 1801 — Disclosed (on the change of ministry) in "Further Proceedings of the Treasury," printed (for the use of the House of Commons) by order dated 12th June 1801, pp. 79, 80, 81.

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beings, without exception, stand in need of, up to a certain age. They may be considered as persons of unsound mind, but in whom the complaint has not swelled to so high a pitch as to rank them with idiots or lunatics. They may be considered as a sort of grown children, in whose instance the mental weakness attached to non-age continues, in some respects, beyond the ordinary length of time.*

To this mental debility it is the characteristic feature of the system in question — transportation to a new planted colony — to be radically incapable of administering that corrective aid which, in the case in question, is so perfectly indispensable. *Field husbandry* is, under this system, the principal employment — field-husbandry carried on by individuals or heads of families, each occupying a distinct dwelling, the interior of which is altogether out of the habitual reach of every inspecting eye. At sleeping times, meal times, times of recreation, no inspection whatsoever: even at working times, none but what is imperfect, interrupted, and accidental. Hence no preventive check to those propensities, the peculiar strength of which has been but too plainly demonstrated by the offence by which the individual was conducted to the scene of punishment — propensities, the indulgence of which is either itself a crime, or introductory to those vicious habits which are regarded as the immediate sources of crimes — sloth, drunkenness, gaming, venereal irregularities, profaneness, quarrelsomeness, mischievousness, rapacity.

Thus, then, on the ground of controul to vicious propensities, stands the parallel between the transportation system and the penitentiary system—the transportation system according to the New South Wales edition of it — the penitentiary system according to that edition of it to which, even in the act of sacrificing it on the altar of secret influence, no man ever durst take upon him to refuse the application of an *improved* one. Colonizing-transportation-system: characteristic feature of it, radical incapacity of being combined with any efficient system of inspection. Penitentiary system: characteristic feature of it, in its original state, frequent and regular inspection; in its extraordinary and improved state, that principle of management carried to such a degree of perfection as till then had never been reached, even by imagination, much less by practice.

Inspection, the only effective instrument of reformative management, being thus essentially inapplicable, and the founders of the colonial system having thus given themselves the nature of things to fight against, they set about it at their ease. Reformation, it was understood, is a species of manufacture: like other manufactures, it requires its particular capital or stock in trade: the assortment being good, that is, in sufficient quantity, and of the accustomed quality, the business will go on in regular course like other businesses. Different sorts of workmen must be got, most of them in red clothes; but to complete the set, there must be some in black, and these must have a particular sort of workshop to themselves, with tools belonging to it. Accordingly, an assortment was provided, not only of officers, civil and military, but of ministers of religion. Besides soldiers, and barracks, and guns, there were to be, and were accordingly, sooner or later, in a proportion more or less adequate, chaplains, and chapels, and good books. Thus far the head reformers saw: farther than this, it was not given them to see. Would the books be read? the chapels visited? the chaplains heard? That was the concern of the chaplains when they got there. Was it in the nature of the case, that any of these events should ever happen? a wild, speculative, out of the way question this — quite out of the line of practice. With great submission, however, to better judgment, it would not, I will venture to say, have been altogether an irrelevant one: a trigger is scarce pulled before the breath may be driven out of a refractory body; but to purify a corrupted heart, especially where nothing is to be got by purifying it, is an operation not quite so simple or so sure.†

* Policy, or I am much mistaken the deepest and steadiest policy, will be found to concur with the tenderest humanity, in regarding the criminal world in this instructive and unimpassioned point of view. To an eye thus prepared, the most profligate offender will present—on the one hand, no fitter object of unprofitable resentment; on the other hand—no less necessary object of preventive coercion, than would be presented by a refractory patient or a froward child. Guided by this analogy, the favourite remedy, *death*, has for these five and thirty years appeared to me (in the cases, at least, in which it is ordinarily applied) scarcely in any degree less absurd in a political, than it would be in a medical point of view. In point of fact, nothing that can with any tolerable propriety assume the name of policy — not sober reason — not so much as reflection — appears at any time to have been the efficient cause of the use so abundantly made of it. Vengeance, passion, began the practice: prejudice, the result of habit, has persevered in it.

† Number of chaplains, at one time, one; at another, two: stations, at first but one; before Captain Collins left the colony, from five to ten, each to appearance at too great a distance from the rest to send auditors to a congregation collected at any other. In the map annexed to Captain Collins' book, I observe about this number of separate stations, without including such small ones as, being to appearance each of them within two or three miles of some other, may be supposed not too far distant for that purpose. Are the labours of the sacred function to be regarded as an essential article among the efficient causes

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Circumstances so favourable to a system of incapacity and negligence, could scarce in any other case have presented themselves. The measure was, indeed, a measure of experiment, and experiment is that sort of operation which calls for the exercise of all sorts of faculties: but the subject-matter of experiment was, in this peculiar case, a peculiarly commodious one—a set of *animæ viles*—a sort of excrementitious mass, that could be projected, and accordingly was projected—projected, and as it should seem, purposely—as far out of sight as possible.

Turn now, my Lord, to the penitentiary system; in which, if the principles pursued as above, are to be considered as the standard of orthodoxy, the scent of heresy must be acknowledged to be but too strong. In a Panopticon penitentiary system, supposing religion to be really a source of benefit—supposing it good for anything beyond a show—men would have had the full benefit of it. Church attendance would *there* have neither been forcible nor yet eludible. The presence of my chaplain it would have been little less possible for them to fly from, than from that of the Almighty whom he served. Unable, neither would they have wished, to fly from it. It would have been adorned and fortified by those accompaniments which, in ministering to this branch of instruction, would have combined with it as much appropriate and congenial entertainment, as inventive industry could contrive to bring together in a situation from which every rival attraction might so effectually be excluded. Yes, my Lord, my whole treasury of artifices would have been ransacked for contrivances to render the tuition as interesting as possible to the pupils; my whole dispensary would have been rummaged for sweets and conserves, to render the physic of the soul as palatable as possible to a class of patients in whom the need of it is so eminently deplorable. Nothing which, in the judgment of my superiors *ad hoc* in the spiritual college, should, in consideration of its conduciveness to the end, stand approved, or though but tolerated,

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of reformation? Then the establishment of from four to eight of these stations, of every number above that of the chaplains—was, and continues to be, indefensible. Instead of being a necessary, is religious service a mere luxury? Then no such officer as a chaplain should have been sent out at all—none at least for the convicts—none, unless it be a regimental chaplain for the benefit of the military; though, indeed, of the military themselves the distribution must have been regulated in some measure by that of the convicts—that of the watchmen by that of the persons to be watched.

Of late, malcontents from Ireland have been sent in multitudes to New South Wales. Part of them, probably the greater part, must have been of the Catholic persuasion: among these, have there been any priests? It seems not improbable; and if so, as far as their quarters may have been within distance of the stations of their lay companions, so far all may have been right. Have there been no priests? Then surely one priest, at least, should have been sent out on the same voluntary footing as the clergymen of the Church of England. If there be a difference, of all branches of the Christian religion, the Catholic is surely that in which the services of a consecrated minister are most strictly indispensable.

In Norfolk Island, how is it? If there be a clergyman now (and I have not found that there is one,) there was no such officer, at least so late as on the 18th of October 1796, though at that time the number of inhabitants was already 887.[a] *Quere* 1. How many fewer souls to be saved have 887 persons in Norfolk Island, than the same number of persons in New South Wales or Great Britain? *Quere* 2. If out of 4848 persons, sacerdotal service be needless to 887 taken at random, what need is there of it for the rest? In January 1792, a minister of religion (the chaplain of the New South Wales corps) did, it appears, pay a visit to that spot. It was, however, the first visit of the kind in so many years; and that a mere temporary excursion, the fruit of spontaneous zeal, and not of any particle of attention that appears ever to have been paid to the subject by the arch-reformers here at home.[b]

But to judge from the whole tenor of Captain Collins' Journal, as well as from the nature of the case, the truth is, that so far as the convicts were concerned, the real service which it was in the power of any ministers of religion, of any persuasion, or in any number, to render to these poor wretches, was in all places alike: presence or absence made no sort of difference.

What is above was written before the historian's second volume had made its appearance. In this continuation it appears, that in one of the importations of the convicts from Ireland, a priest of the Catholic persuasion (Harold by name) was actually comprised.[c]

If instead of this seditionist, a loyalist clergyman of the same religious persuasion had been sent out, such an addition to the civil establishment might, in that country, one should have thought, have been not ill worth the expense. The *political* sanction might thus have found in the *religious* a useful ally—a useful defence against the hostility of the *popular* sanction. The spirit of tumultuary violence, the epidemic malady for the cure of which these deplorable objects had been ordered to this disastrous watering-place, might in that case, instead of being constantly stimulated, have been gradually allayed. The rebel priest, the most pernicious pastor that could have been found for the rebel flock, might have been consigned to Norfolk Island, on the supposition of their remaining all of them in New South Wales. The two lives which it was afterwards deemed necessary to sacrifice to public justice and security might thus have been preserved,[d] and the exigence which has given birth to so dangerous an expedient and precedent as that of volunteer associations among unreformed convicts,[e] might never have taken place.

[a] 1 Collins, pp. 504, 508, 512, 497.
[b] Ibid, p. 194. [c] Ibid. p. 293.
[d] 2 Collins, p. 333. [e] Ibid. p. 303.

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would, on account of the novelty of it, have been shrunk from, or on account of the expense of it, have been grudged. *Valeat quantum valere potest*, would have been my maxim; and that (mistake me not, my Lord) not as a pretence for indifference and neglect, but as a memento and a spur to attention and to activity. Men who have the interests of religion most at heart, and whose endeavours have been most conspicuously bent to the turning it to the best possible account in the way of practice—such are the men my hopes had always pointed to for counsel and support. Such, my Lord, were *veneficia mea*—my pious frauds: the stock of them, I assure your Lordship, was not a scanty one. Delinquency (if —— and —— would have given leave)—delinquency in habit, in act, even in idea, would have been shut out; shut out, not merely by spiritual bars, by moral bars, by legal bars, but by physical ones.

In no point did my system rest itself upon cold forms. In body, in mind, in every way, if my patients suffered, I suffered with them. By every tie I could devise, my own fate had been bound up by me with theirs. *Vicinity* to the public eye—vicinity was the object with me, not distance. Recluse by inclination, popular at the call of duty, I did not shun the light—I courted it. Self-devoted to the task of unremitting inspection, it would have been a reward to me, not a punishment, to be as unremittingly inspected.

Thus, in so far as reformation is concerned, stands the comparison between the two systems, on the ground of general principles or *theory*, if a word so much in disgrace with men in whose vocabulary *practice* is synonymous with *wisdom*, may for the moment be endured. A theory is, indeed, no farther good than in so far as its indications receive, as occasion serves, the confirmation of *experience*. But experience, though an instructive guide, is apt to be a costly one. In the present instance, in the compass of ten or eleven years, it had cost, four or five years ago, upwards of a million:* by this time little less, probably, than a million and a half; of which near the odd million (as your Lordship will see) might have been saved, and with it the shame of a project, involving in its very essence the impossibility of success, saved, together with lives by hundreds, and crimes and immoralities without account, if antecedently to the experiment, in addition to the tongue of an orator, there had been an eye at the treasury, capable of reading in the book of human nature.

Under a system of suppression persevered in, spite of parliamentary warnings,† for these ten years,‡ from what source shall the testimony of experience be collected? Happily a more competent, a more instructive, a more authentic source: a source, in any point of view, more valuable, could scarce have been wished for, than that which the public, during the sleep of superior office, has been put in possession of by an eye-witness—the professed moral historiographer of the colony, the late Judge Advocate, *Captain Collins*. Nor yet simply the historiographer, but the panegyrist, the professed panegyrist likewise: a character which, when accompanied, as in this instance, with that candour and those internal marks of correct veracity with which it is so rare for it to be accompanied, renders the testimony, in this point of view, more than doubly valuable.

Fortunate it is, that whether from firmness in one quarter, or from negligence in another, the principle of suppression has passed by a mass of information that renders its exertions elsewhere of little use. The work is dedicated, and dedicated by permission, to the late Lord Sydney: in great letters, the title of "Patron of the work," as well as that of "Originator of the plan of Colonization," are conferred upon the noble lord. "To your patriotism," says the panegyrist to the patron, "the plan presented a prospect of *political* and *commercial* advantage." "The following pages," continues the worthy magistrate, with perfect simplicity and unquestionable truth, "will serve to evince with how much wisdom the measure was suggested and conducted; with what beneficial effects its progress has been attended; and what future benefits the parent country may with confidence anticipate."

In the preface, he concludes with acknowledging himself to be "anxiously solicitous to obtain" for the colony "the candid consideration of his countrymen; among whom," he says, "it has been painful to him to remark a disposition too prevalent for regarding it with odium and disgust." ..... "Its utility consists," according to him, in, that "besides the circumstance of its freeing the mother country from the depraved branches of her offspring, in some instances *reforming* their dispositions, and in all cases rendering their *labour* and talents *conducive* to the public good, it may prove a valuable *nursery* to our *East India* possessions for *soldiers* and *seamen*." .....He speaks of a time in which "he began to think.....that some account of the gradual reformation of such flagitious characters, as had by many" (he very candidly adds, "and those not illiberal") "persons in this country been considered as past the probability of amendment, might not be unacceptable." So

* £1,037,230.—28th Finance Report, 26th June 1798, p. 22.

† See 28th Report of the Committee of Finance, anno 1798.

‡ The last official communications made to the House of Commons on the subject of New South Wales, bear date in 1792.

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far the magistrate historian: as to the flagitious characters, there is no want of them; but as to any evidence of their reformation, here and there a white blackamoor excepted, it is all of it in his wishes—there is none of it in his book. How far the general conceptions, thus conveyed in the preface, are in agreement with the rigid truth of things, will appear from the more specific statements collected a little farther on, at the bottom of the page. For these little inadvertencies, if such they should prove, the interests of the public service are but so much the more in the author's debt; since, if confining himself to the province for which he appears so eminently qualified, the superior province of the historian, he had left the task of the panegyrist to inferior hands, the satisfaction which, as matters stand, I flatter myself with being able to afford your Lordship on this ground, might have been less complete.

Of passages to the like effect with those which are here transcribed, enough might have been found to fill a volume. Those which are given here are selected as exhibiting the condition of the colony at the latest points of time; this being the stage at which the reforming tendency of the discipline, had it possessed any such tendency, had had the longest time to operate. General statements and observations are moreover preferred to histories of individual criminals, or crimes, partly out of deference to the logical rule, *syllogizari non est ex particulari*—partly because the particular anecdotes of this kind, being the materials of which a very considerable part of that large but interesting work are composed, could not possibly have been comprised within the limits prescribed by the object of this address.

The persons spoken of as *reformed*, are for the most part spoken of by name: in number they would scarcely, I think, be found to exceed a score—certainly not double that number, even including the many backsliders. The number of the unreformed is to that of these reformed characters, as a hundred or so to one. A bettermost sort of rogue—a man in whom on any occasion the smallest degree of confidence can be reposed, appears in that country to be beyond comparison a scarcer animal than a *black swan*. One thing the historian is clear in, that as to all but the few *lusus naturæ* thus distinguished, the longer they stay in that scene of intended reformation, and the more they are left to themselves (that is, the more entirely they are left to the separate influence of the pure principle of *colonization*, without any admixture of its discarded rival, the principle of *inspection*,) the worse they are; those who have the yoke of bondage still about their necks being a sort of half honest, half sober, half provident profligates, in comparison of those called settlers whose term is at an end.*

* I. *Improbity, uncorrected and incorrigible.*

No. 1, p. 382. *July* 1794.—"An honest servant was in this country an invaluable treasure: we were compelled to take them, as chance should direct, from among the common herd; and if any one was found who had some remains of principle in him, he was sure to be soon corrupted by the vice which everywhere surrounded him."

No. 2, p. 419. *June* 1795.—"With very few exceptions, it was impossible to select from among the prisoners, or those who had been such, any who would feel an honest interest in executing the service in which they were employed. They would pilfer half the grain entrusted to their care for the cattle; they would lead them into the woods for pasturage, and there leave them, until obliged to conduct them in; they would neither clean them nor themselves. Indolent, and by long habit worthless, no dependence could be placed on them. In every instance they endeavoured to circumvent."

No. 3, p. 445. *December* 1795.—"At Sydney, another attempt being made to steal a cask of pork from the pile of provisions which stood before the storehouse, the whole was removed into one of the old marine barracks. The full ration of salt provisions being issued to every one, it was difficult to conceive what could be the inducement to these frequent and wanton attacks on the provisions, whenever necessity compelled the commissary to trust a quantity without the store. Perhaps, however, it was to gratify that strong propensity to thieving, which could not suffer an opportunity of exercising their talents to pass, or to furnish them with means of indulging in the baneful vice of gaming."

No. 4, p. 473. *April* 1796.—"No punishment, however exemplary, no reward however great, could operate on the minds of these unthinking people."

II. *Improvidence, extreme and universal.*

No. 1, p. 414. *April* 1795.—"The farmers now began everywhere putting their wheat into the ground, except at the river, where they had scarce made any preparations, consuming their time and substance in drinking and rioting, and trusting to the extreme fertility of the soil, which they declared would produce an ample crop at any time, without much labour."

No. 2, p. 435. *November* 1795.—"Instead of completing in a few hours the whole labour which was required of a man for the day, the convicts were now to work the whole day, with the intermission of two hours and a half of rest. Many advantages were gained by this regulation;—among which, not the least was the diminution of idle time which the prisoners before had, and which, emphatically terming *their own time*, they applied as they chose, some industriously, but by far the greater part in improper pursuits, as gaming, drinking, and stealing."

No. 3, p. 458. *February* 1796.—"They [the settlers] seldom or never showed the smallest disposition to assist each other. Indolent and improvident, even for their own safety and interest, they in general neglected the means by which either could be secured."

No. 4, p. 467. *March* 1796.—"At the Hawkesbury, *where alone any prospect of agricultural*

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Reformation being the topic at present on the carpet, it is to this that the present string of extracts will therefore be confined. The other topics glanced at in the passages quoted out of Mr. Collins' preface, belong to the head of *incapacitation* — I mean with reference to the commission of fresh offences within the limits of the mother country: to *incapacitation*, I say, and *economy*. The merits of the plan in relation to these objects, will be considered apart, under their respective heads.

Such was the state of the "improved colony" in September 1796, at the termination of the period comprised in the first and already published history of Mr. Collins. A continuation from the same able and candid hand is

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advantages was to be found, the settlers were immersed in intoxication: riot and madness marked their conduct; and this was to be attributed to the spirits that, in defiance of every precaution, found their way thither."

No. 5, p. 470. *April* 1796.—"In the beginning of this month, a very liberal allowance of slops were served to the prisoners, male and female. As it had been too much the practice for these people to sell the clothing they received from government as soon as it was issued to them, the governor on this occasion gave it out in public orders, that whenever it should be proved that any person had either sold or otherwise made away with any of the articles then issued, the buyer, or seller, or receiver thereof, would both subject themselves to corporal or other punishment. *Orders, however, had never been known to have much weight with these people.*"

No. 6, p. 482. *June* 1796.—"The settlers at the different districts, and particularly those at the Hawkesbury, had long been supposed to be considerably in debt; and it was suspected that their crops for two or more seasons to come were pledged to pay these debts."

No. 7, p. 483. *June* 1796.—"The gentlemen who conducted the inquiry found most of the settlers there [the Hawkesbury] oftener employed in carousing in the fronts of their houses, than in labouring themselves, or in superintending the labour of their servants in their grounds."

No. 8, p. 483. *June* 1796.—"The practice of purchasing the crops of the settlers for spirits, had too long prevailed in the settlement; ..... it was not possible that a farmer, who should be idle enough to throw away the labour of twelve months for the gratification of a few gallons of poisonous spirits, could expect to thrive."

No. 9, p. 492. *August* 1796.—"They [the settlers] were in general of such a thoughtless, worthless description, that even this indulgence might induce them to be, if possible, more worthless and thoughtless than before; as, to use their own expression, they had now to work for a dead horse." The indulgence consisted in the being suffered to give assignments on their crops then in the ground, to save themselves from imprisonment for debt.

III. *The longer the application of the supposed cause of reformation, the worse the effect.*

No. 1, p. 358. *March* 1794.—"Had the *settlers*, with only a common share of honesty, returned the wheat which they received from government to sow their grounds the last season, the reproach which they drew upon themselves by not stepping forward at this moment to assist government, would not have been incurred; but though to an individual they all knew the anxiety which every one felt for the preservation of the seed-wheat, yet when applied to, and told (in addition to the sum of 10s. a-bushel) that any quantity which they might choose to put into the store should be brought from their farms without any expense of carriage to them, they all or nearly all pleaded an insufficiency to crop their ground for the ensuing season; a plea that was well known to be made without a shadow of truth."

No. 2, p. 394. *October* 1794.—"*The presence of some person with authority* was become absolutely necessary among those settlers, who finding themselves free from bondage, instantly conceived that they were above all restrictions; and *being without any internal regulations*, irregularities of the worst kind might be expected to happen."

No. 3, p. 432.—It appears likewise by this muster, that one hundred and seventy-nine persons subsisted themselves independent of the public stores, and resided in this town. To many of these, as well as to the servants of settlers, were to be attributed the offences that were daily heard of: they were the greatest nuisances we had to complain of."

No. 4, p. 471. *April* 1796.—"At the Hawkesbury, the corn-store was broken into, and a quantity of wheat and other articles stolen; and two people were apprehended for robbing the deputy-surveyor's fowl-house."

No. 5, p. 471. *April* 1796.—"All these depredations were chiefly committed by those public nuisances, the people of the stores."

No. 6, p. 473. *April* 1796.—"The Hawkesbury was the refuge of all the Sydney rogues when in danger of being apprehended."

No. 7, p. 474. *May* 1796.—"Daily experience proved that those people whose sentences of transportation had expired, were greater evils than the convicts themselves..... Many were known to withdraw themselves from labour and the provision-store on the day of their servitude ceasing. On their being apprehended, punished for a breach of order, and ordered again to labour, they seized the first opportunity of running away, taking either to the woods to subsist by depredations, or to the shelter which the Hawkesbury settlers afforded to every vagabond that asked it. By these people (we were well convinced) every theft was committed."

Thus far Captain Collins. The corruption which it thus appears was so general among the settlers, *i. e.* among those whose terms of bondage were expired, who by that means had recovered a degree of independence, and had withdrawn themselves more completely out of the reach of every inspecting eye, had (as might have been expected) this independence, this exemption from inspection for its cause. For so late as in August 1792, a time when the residence of those who had arrived first in the colony had not been so long as five years, and when few had as yet regained their liberty, and none had been in possession of it for any length of time, "with very few exceptions," says Captain Collins, p. 210, the uniform good behaviour of the convicts was still "to be commended."

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promised (I see) by the public prints, for a time which may perhaps have arrived before these pages of mine have reached your Lordship's eye.

What subsequent improvements the colony may have received in relation to this same head, is a point on which I cannot pretend to any information from that source.*

In the mean time, so far as concerns general results, which are all your Lordship would endure to see crowded into this place, accident has put into my hands two testimonies of no mean account. In one respect they have the advantage of any which even your Lordship's authority could command: they are in each instance the uninfluenced and undisguised effusions of the pen, committed to paper without the idea of being made subservient to this or any other public purpose. They wear no factitious colours; neither of that flattering cast which is so apt to give a tinge to the smallest piece of paper that can ever find its way from any such quarter to your Lordship's office, nor yet of the opposite cast.

The first is an extract of a letter from Captain Hunter, at that time Governor of the colony. The date of it is the 20th of May 1799: about two and a half years had been at that time added to the experience reported by Captain Collins: —

"*Sydney, New South Wales,*
"*20th May* 1799.

"The fatigue to which the Governor of this territory must submit, both mental and corporeal, is far beyond any idea you can have of the nature of his duty rendering such fatigue necessary in the Commander in chief.

"My former knowledge and acquaintance with this country encouraged me in a hope, which, however, in some respects proved delusive, that I should, with ease to myself, and with proper effect and advantage to the public, have been able to manage all the duties of my office. But I had not been long entered upon it, before I was awakened from that dream of comfort and satisfaction, the prospect of which I had so vainly indulged. The seeds of those vexations which had so disappointed me, had been sown for a very considerable time, and being rather of a prolific nature amongst such people, had gained so much strength, that it will require immense labour to grub them up by the root.

"I have persisted in my attempt to that end, and mean not to change my system; which, be assured, from being calculated to lay restraints upon every species of vice and immorality, cannot amongst such characters be a very popular one: that, however, will be a matter of no immediate concern with me, if I succeed only in a small degree to check the growing profligacy and abandoned turn of the lower classes of the people.

"This is a good *country*, and will do well, but its progress in improvement would be considerably hastened, *could government be prevailed upon not to overstock us with the worst description of characters*; for, *whilst the mass of the people continue to be of that class*, our difficulties will ever be very considerable: *the industrious and well-disposed become a continual prey to the idle and worthless.*"

It was not to myself that this letter was addressed, neither had I then, nor have I since, had the honour of any personal acquaintance with the gentleman from whom it came. It was a letter perfectly spontaneous, addressed to a person with whom he had never before had any written intercourse.

Your Lordship sees what it is the governor of the improved colony, down to that time, could find to speak of — great labours, no successes. Could any thing have been found that could have been made to wear the appearance, though it were but of a half success, would it have been passed unnoticed? Meantime, if in the line of *moral* improvement the governor made such small advance, it was not (if the governor himself, or the judge advocate is to be believed) for want of trying it.

The country (your Lordship sees) is a "*good country*;" but the word *good* might lead to conclusions rather wide from truth, if a distinction were not to be made between God Almighty's works and * * * * *'s. To its Almighty Creator is it indebted for those capabilities which neither neglect nor mismanagement can deprive it of: the use made of them had been depending upon * * * * *. Your Lordship sees upon what condition its chance of improvement depended — (in the opinion of the governor at least, upon whom everything had been depending under * * * *;) upon its not being applied to the chief, if not the only purpose for which it had been established, and for which it continues to be kept up: the purpose, with reference to which, according to * * * * *, it was so much superior to everything else. By the

* Since the above paragraph was written, the public has been put in possession of the promised information; and surely never did the deductions of reason receive a more ample confirmation from experience, than has been afforded in the present instance by the actual condition of the "improved" colony, as exhibited in this second volume, dedicated by permission to the noble lord in whose hands the management of it had by that time been reposed. Extracts in continuation of those given from the first volume are intended to accompany this address.

To keep clear of all possible imputation of intrigue, I abstained purposely from every endeavour to open any sort of communication, direct or indirect, with the respectable historian to whose ulterior testimony I was looking forward with such well-grounded confidence.

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governor, after all the labours of which he speaks so feelingly, the nature of things could not be changed. While those who have become bad for want of inspection, remain without any inspection,* (as they must do there, such of them as are not in jail there,†) they will remain as bad as ever, or rather, according to the estimate given of them as above by the late chief magistrate, become still worse.

The next article, from a source than which that distant region never furnished a more respectable one, bears date the 7th of October 1800. The part that applies to the present purpose, comes after a paragraph of considerably greater length, which I may have occasion to submit to your Lordship under the head of *Economy*: —

"Governor King, who has the command, will make many regulations, as far as is in his power, for the security and advantage of the colony; and likewise pay some attention to the morals and instruction of the rising generation, *to which none has been hitherto given*; for certainly, if we ever hope to see worth or honesty in this settlement, we must look to *them for it*, and not the *present* degenerate race."

What your Lordship might not otherwise have supposed, this letter is from a female pen, as well as to a female eye; not a word more in it that bears reference to anything that can be called *politics*. Mere accident threw it into my hands. For authentication sake, designation will (I suppose) be regarded as indispensable; but where that sex is concerned, the most reserved mode that can be thought of, is the most respectful and the

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* I. *General necessity of Inspection.*

No. 1, p. 63. *March* 1789.—"Being advanced in years, he (the person entrusted with the direction of the convicts at Rose Hill) was found inadequate to the task of managing and controuling the people who were under his care, the most of whom were always inventing plausible excuses for absence from labour, or for their neglect of it while under his eye."

No. 2, p. 400. *December* 1794.—"Our settlements had now become so extensive, that orders did not so readily find their way to the settlers, as runaways and vagrants, who never failed of finding employment among them, particularly among those at the river."

† II. *Necessity of Jails and Jail Gangs for closer Inspection.*

No. 1, p. 383. *July* 1794.—"During this month a building, consisting of four cells for prisoners, was added to the guard-house on the east side of the Cove. This had long been wanted; and the whole being now inclosed with a strong paling, some advantage was expected to be derived from confinement adopted only as a punishment."

No. 2, p. 402. *December* 1794.—"A jail-gang was also ordered to be established at Trongabbe, for the employment and punishment of all bad and suspicious characters."

If I understand this *jail-gang* right, it was composed of a set of workmen, working not within the walls of a jail (a place in which there could hardly be any work to be done;) but though in an unconfined space, an uninclosed field, yet under the close inspection of persons, set over them as guards, with or without the addition of fetters, to keep them from running away.

No. 3, p. 487. *July* 1796.—"The town of Sydney was shortly after filled with people from the different settlements, who came to the judge-advocate for certificates of their having served their respective sentences. Among these were many who had run away from public labour before their time had expired; some who had escaped from confinement with crimes yet unpunished hanging over their heads; and some who, being for life, appeared by names different from those by which they were commonly known in the settlement. By the activity of the watchmen, and a minute investigation of the necessary books and papers, they were *in general* detected in the imposition, and were immediately sent to hard labour in the town and *jail-gangs*.

"To the latter of these gangs, additions were every day making; scarcely a day or a single night passed, but some enormity was committed or attempted, either on the property or persons of individuals."

No. 4, p. 493. *August* 1796.—"The *jail-gang* at this time, notwithstanding the examples which had been made, consisted of upwards of five and twenty persons, and many of the female prisoners were found to be every whit as infamous as the men."

To crown the whole, and that nothing might be wanting that could help to demonstrate the complete inefficacy and inutility of everything that is peculiar to the penal colonization system, one of its latest improvements has been the importation of the *hulk* system from the Thames. In August 1801, the Supply (we are informed by Lieutenant-Colonel Collins, in the continuation of his History) "was fitting up as a *hulk* to receive such convicts as were incorrigible." ii. 330.

To avoid employing *prisons* and *hulks* at home, expeditions upon expeditions are fitted out to employ convicts in farming at the antipodes. In the course of a few years, a discovery is made, that drinking is preferred to labour, and that nothing is to be done without *hulks* and *prisons*, even *there*, though in a situation in which profitable labour under confinement is impossible; and it is this combination of particular forced idleness, with universal unbridled drunkenness, that is given not only as an "improved" system, but a system to such a degree improved, as to justify the proscription of a system of sobriety and industry that would have been carried on at home at a fraction of the expense.

At this time, at the expense of £3954, the colony had been put in possession of what is called "*the county gaol*," a convenient sort of building, which besides that, its standing use, serves occasionally as a bonfire. The same gaol, the Sydney gaol, (metaphysical discussion about identity apart) had served once in that capacity already, as well as another at Paramatta. [ii. Collins, p. 197, 276, 331.] The country is particularly favourable to such exhibitions. Things take fire there of themselves [ii. Collins, p. 72;] *a fortiori*, with a little assistance.

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best.* Such was the state of this "improved," and ever-improving colony, with the benefit of at least a year's improvements, more than —— and —— could as yet have heard of at the time (I mean July 1800) when the idea of "relinquishing" the penitentiary system, in consideration of the superiority of their improved colonial system, was first declared in black and white, after having been determined *in petto* for a length of time unknown to me. A year's improvements more, and still——and——did not know that there were children there, or if there were, that they were worth saving from the gallows.

"But have not colonies," says your Lordship, "has not transportation to those colonies been a source of good, and even in this particular line? Have not reformation and honest industry been among the experienced fruits of it?" Yes, my Lord, where the bulk of the population has been ready found and composed of men of thrift and probity—where the mass of the population being formed, the children of improvidence have been dropped in in driblets, absorbed and assimilated as they dropped in, by the predominant mass of the population into which they were received. In America, a master waiting to take charge of the delinquent as soon as landed—that employer a man of thrift—one of a neighbourhood all composed of men of thrift, all ready to make common cause against a fugitive or refractory bondsman: the bondsmen not collected together in any one place in numbers, but distributed among a number of families, one or a few at most in each. Such was a sort of society in which each convict would have to serve and be trained up in unremitting habits of unavoidable industry during his bondage: of the same cast was the society in which, if he settled at all in that quarter of the world, he would have to settle upon his restoration to independence.

Thus it was in *America*—thus it was with the convict consigned to any one of those *old established* colonies. How was it in *New South Wales?* The native inhabitants a set of brutes in human shape—the very dregs even of savage life—a species of society beyond comparison less favourable to colonization than utter solitude; a set of living nuisances, prepared at all times for all sorts of mischief: for plundering the industrious;† for quarrelling with the quarrelsome;‡ for affording harbour to the fugitive.‖ Other inhabitants, none but the very profligates themselves, who were thus sent by thousands from British gaols, to be turned loose to mix with one another in this desert; together with the few taskmasters that were to set them to work in the open wilderness, and the military men who were sent out with them in large but still unequal numbers, to help to keep within bounds the mischief they would be sure to occupy themselves with when thus let loose. Excepting these military guardians, whom, the endeavour was, though a vain one, to keep from mixing with their wards, it was of the very dregs of society—of men unfit to live at large in society—of men proved to be such by experience, and those collected together in multitudes, that the mass of society in this colony has hitherto been, was even meant to be, and for some generations at least would, for any rational ground that the founders could have for expecting the contrary, continue to be composed.

To an eye incapable of seeing further into things than their names, the two above contrasted scenes of existence were indeed the same, since both were *colonies;* but in themselves no two measures could in this respect be more different than transportation of convicts in retail, into a colony ready formed by honest men, and transportation of convicts by wholesale, into a colony not formed, but to be formed, and to be formed of convicts.

"But may not a set of regularly honest settlers be collected thither by degrees? and thus, with the addition of the improved characters, how few soever at first among the emancipated convicts, accumulate in time into whatever majority may be requisite to form the basis of an industrious and thriving population?" Possibly, my Lord; the bounds of possibility are wide: not even very improbably, so it be in some future century; in the present one, hardly. For what is there that should draw thither men of thrift and capital?—draw them to a place which, except a part of the stock of necessaries for its own inhabitants, neither does produce, nor presents any the smallest indication of being about to produce anything that will not be at the very time produced in other places, as well as imported into Britain from other places at a much cheaper rate—to a place in which, in the meantime, "*the industrious and well disposed*" will (as the late chief magistrate and the late governor seem to agree in observing) "*become a continual prey to the idle and worthless.*"

Loud and frequent have been the complaints (nor altogether, I suppose, without truth) about *inveigling* men (as it is called) to North America; *cruel* and *fraudulent* are the epithets given to the practice: to North America, where if manners are not, upon the whole, so amiable, yet crimes of all sorts,

* Oblique as it was when the announced designation presented itself in print, my resolution failed me, and I expunged it. The sex of the writer, and the fidelity of the extract, being admitted, whatever claim to confidence can be given by situation will be found stamped upon the style.

† i. Collins, 444, 458, 459; ii. 15, 31, 33, 56, 204.

‡ Ibid. 30, 415; ii. 281.

‖ Ibid. 459; ii. 84, 40, 59, 299.

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probably crimes of depredation certainly, are even more rare than here: to America, where a human being not employed in industry, productive or professional at least, is scarcely to be found. If to invite men to such a country be an act of fraud and cruelty, what must the act of that man be, who should seek to engage an honest settler to sink his capital, his industry, and his prospects, in New South Wales?

But of the prospect of advantageous produce from this as well as all other sources, more will come to be said presently, under the head of *economy*, to which it more immediately belongs.

III. Third object or end in view—*Incapacitation;* rendering a man incapable of committing offences of the description in question any more: understand in the present instance *in the same place*—the only place (it should seem) that was considered as worth caring about in this view.

In this object was seated, to all appearance, the strong hold and main dependence of the system: of reformation it would (I dare believe) have been acknowledged in a whisper there was nothing meant but the form: it was a mere make-believe. In the expedient employed for rendering it impossible for a man to do any more such mischief in the only spot in the world worth thinking about, consisted the sum and substance of the new system of compulsive colonization.

This contrivance was as firmly laid in school-logic as could be wished. Mischievously or otherwise, for *a body to act in a place*, it must be there. Keep a man in New South Wales, or anywhere else out of Britain, for a given time: he will neither pick a pocket, nor break into a house, nor present a pistol to a passenger, on any spot of British ground within that time.

Depredation, though committed out of Britain, would indeed not the less be depredation; but happily for our statesmen, here came in another rule of logic to their aid. *Things not apparent, and things not existing, belong to the same account;* the depredation and all other kinds of mischief and vice not making their *appearance*—that is, not here in Britain—it is the same thing as if there were none. Of the aggregate mass of his Majesty's subjects, good, bad, and indifferent, taken together, such as remained in this and the next island constituted, according to this mode of taking stock, the only articles that had any pretensions to a place in the inventory. Those who were to be sent out of it belonged neither to the list of souls to be saved, nor to the list of moral beings. On these principles, how the people thus sent thither behaved while there, was a point which, so long as they did but stay *there*, or, at any rate, did not come back *here*, was not worth thinking about. Such was the religion, such the morality, which presided over the design and execution of the picture of industry and reformation in New South Wales.

Admitting that immorality and misery are rendered matters of indifference by being shifted from place to place, and that mischief of all kinds, so it be excluded from certain parts of his Majesty's dominions, may be regarded as annihilated—two points remain still to be considered:

One is, in what degree the contrivance thus hit upon for securing the country in question, against the future presence of the individuals in question, is productive of that effect?

The other is, how far the advantage thus purchased is consistent with the principles of law and justice?

The answer, not to keep your Lordship in suspense, will, I believe, be found to be, that so far as the object is attained, it is attained at the expense of justice; but that even with that expense, the degree in which it is attained is very imperfect: imperfect from the first, and, in the nature of things, destined to become more and more so, the longer the establishment continues; and that, upon the whole, the *shame of inefficacy* is, in the very nature of the project, added to the *odium of injustice*.

The nature of the expedient being, to be stated in the first place, before the efficacy of it can be examined into, the topic of justice will demand, on this as well as other accounts, the precedence. A word or two in the way of history is on this occasion unavoidable.

Transplantation to the colonies, a measure employed for the first time (at least under authority at this time reputed legal) soon after the Restoration,* is a mode of punishment which in lieu of, or in addition to, the other punishments annexed to offences comprised under the unfathomable and inexpressive appellation of *felonies*, extended itself gradually into use, so long as the now independent States of America remained upon the list of British colonies. This, like other *chronical* punishments, being divisible *ad libitum* into portions of all lengths, different lengths, adapted to the supposed exigency of the different cases of delinquency, have on different occasions, with great care and precision, been marked out: seven years, fourteen years, and for life: the length beyond comparison the most common, seven years: to say nothing of other lengths, not without example, such as terms between 7 and 14 years, and between 0 and 7 years. The statute in which the pains taken about the measurement of these lots are more conspicuous

* 13 & 14 Ch. II. c. 1, § 2; c. 12, § 23.

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(I believe) than in any other, is a statute of the present reign, the statute of 1779;* the original penitentiary act — one of the two acts, which in a letter that will probably be one day presented in a more particular manner to your Lordship's notice, —— declares himself to have "*examined*" and "*understood the object of.*" In this statute, the several gradations of this species of punishment, or those of them at least which are in use, are brought together; and a sort of system of equivalence is established between the several degrees of *this* species of *chronical* punishment and a set of corresponding degrees, in three corresponding scales of so many *other* species of *chronical* punishment: confinement in the *hulks*, confinement in the *then* intended *national* and definitive *penitentiary-houses*, and confinement in the then existing *gaols*, in their destined character of so many local and temporary substitutes to those general penitentiary-houses.

This punishment, which while British America continued the scene of it, had fulfilled the ends of punishment in some points, failed in others. To the primary object, that of *example*, it was most obviously and incurably incompetent. Unequal in its essence, rendered still more unequal by its accidental concomitants, it was to one man as bad as death, to another a party of pleasure. By an irregularly applied, as well as unexplicitly declared distinction, on most individuals it imposed the additional yoke of *bondage;* others it left in possession of *independence*. To any one who had proposed to himself a spontaneous emigration to the same place, it presented a license for practising with impunity such offences as would send him there. So far was pure incongruity. With reference to the two other objects, *reformation* and *incapacitation*, it proved efficacious or inefficacious according to contingencies — contingencies altogether out of the thought as well as view and influence, not only of those *to* whom it was administered, but of those *by* whom it was administered, as well as of those by whom it was *ordained*. In some instances a man became in a greater or a less degree reformed; and in those instances the mother country commonly saw no more of him: in others, he remained unreformed; and in those she was sure to receive him back.†

Reformation is a very complex object: thought and contrivance are necessary to the

* 19 Geo. III. c. 74.

† Under the *old* transportation system, all this inequality was the result of the course taken for ridding the country of these its obnoxious inmates. Powers being given for the purpose by parliament, they were made over by government to a contractor, who, for the profit to be made by selling their services, for the penal term, to a master in America, engaged to convey them to the destined scene of banishment, or at least to convey them out of the country (the mother country) from which they were to be expelled. Taking the punishment thus upon the face of the letter of the law, the effect of it would be in all cases alike — to add to the fundamental and introductory part of it, *banishment*, the ulterior and perfectly distinct punishment of *bondage* — banishment from the mother country, bondage to be endured in the country to which the convict was to be expelled. Such being in all cases the effect in appearance, such also would it in general be in practice; because, in general, the poverty of the convict precluding him from purchasing any indulgence, the price paid for his services by a stranger in America was the only source of profit to the first purchaser — I mean, the merchant who in Great Britain insured the conveyance of the convict to that distant quarter of the globe. But a very moderate sum of money was sufficient to enable a man to exempt himself from this most afflictive part of the punishment; for wherever it happened that through the medium of a friend or otherwise he could bid more for himself than would be bidden for him by a stranger, liberty thereupon, of course, took place of bondage. Poverty, therefore, rather than the crime of which a man was convicted, was the offence of which the bondage was the punishment; and, so far as the amount of the depredation is to be taken as a measure of the magnitude of the crime, the greater the crime, the better the chance which the criminal would in this way give himself for escaping the severer part of his lot. The profession of a receiver of stolen goods — a connexion with an opulent and successful gang — were among the circumstances that would in general secure to a man an exemption from this most salutary as well as afflictive part of the penal discipline.

Under the *new* transportation system — the system of transportation to the land of *general* bondage — this inequality received a pretty effectual correction, far as the nature of the punishment was from being improved, and the condition of the convict population from being meliorated. upon the whole. The person on whom the lot of the convict, in this respect, was made to depend, was no longer in any instance a friend or trustee converting the nominal bondage into real liberty: he was in every instance one and the same person — the general agent of the crown, the governor of the colony, who, with regal powers, dealt out justice or mercy, in each instance, according to the joint measure of his own humanity and his own wisdom. Bondage was not now to be bought off for money; at the same time, it was but natural that in the case of an individual whose education and mode of life had habitually exempted him from ordinary labour, a proportionate degree of indulgence should be manifested, in respect of the quality or quantity of his task. So far, so good. On the other hand, the instances to which this improvement extended were but few and accidental; while, in point of industry, sobriety, and other features of moral amelioration, the condition of the many was, by the causes already stated, rendered worse, not better, by the change. Under the old transportation system, the person on whom the condition of the convict depended — a master employing him for his own (the master's) benefit — would stand engaged, by the tie of personal interest, to extract from him as much labour as could be ex-

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pursuit of it. *Local exclusion* is a very simple object: it may be aimed at almost without thought. In the one case, if any thing be effected, it must be by mind operating on mind;

tracted,—to watch over his conduct, in that and every other respect, with the most uninterrupted vigilance,—and, upon the whole, in respect of quality as well as quantity of work, to give the utmost value to his service. Under this new transportation system, the management being mere *trust* management—management under the general orders of the governor, conducted for the benefit of the public purse—management, therefore, without interest, at least without pecuniary interest, as well as without any other than a very loose inspection—the effect of it was in this respect such as from the nature of man might be expected. By the late chief magistrate of the colony, the average amount of a day's labour was estimated (as will be seen further on) at not more than a third of what would have been rendered by a free labourer working on the ordinary terms.[a] True it is, that a considerable part of the convict population has all along been distributed among the officers, to be employed by them for their own benefit; in which case it can scarce be doubted, but that in all points, and especially in that of industry, more attention was paid to the conduct of the convicts thus disposed of, than was or could be paid to such of them as were retained, on the footing above exhibited, in the public service. Still, however, in this case, the closeness of inspection would on many accounts fall short of that which under the old transportation system (the system of transportation to America) would have been generally kept up. In America, the masters becoming such by purchase would without exception be persons already engaged in habits of vigilance and industry. In a society composed of military men, a character of this sort could not reasonably be expected to be found equally prevalent. In America, the master's own choice had in every instance fixed him, and for life, in that employment for the purpose of which he took upon himself to purchase the interest in question in the convict's services. In New South Wales, the profession of the species of master in question is of the number of those which are embraced more frequently through disinclination than through any predilection for money-getting industry—thoughts and wishes pointing homewards the whole time—and the continuance of the situation, by which the demand for such compulsive service is afforded, short-lived and precarious. Service that was to be had for nothing would not naturally (it is true) in that situation, any more than in any other, be refused: but, on the other hand, neither does it seem reasonable to suppose, that in such circumstances any such advantage would, upon an average, be derived from it, as in America, under the old transportation system, would have been generally extracted by a purchasing master from the services of his purchased bondsman.

The emancipated convicts, under the name of *settlers*, constituted indeed another class of masters, who, under the authority of the governor, either on the same gratuitous terms as in the case of the officers, or for wages on the footing of a free contract, shared in a considerable proportion whatever benefit was to be reaped from the labour of their fellow-convicts during their respective penal terms in some instances, as well as in other instances after the expiration of those terms. But in the way of moral improvement, as well as steady industry, still less benefit (it is evident) was to be expected from this source than from the other. Accordingly, at the Hawkesbury settlement (in a passage which your Lordship has already seen, p. 467, anno 1796, stated by the late chief magistrate as the only one of all the settlements "where any prospects of agricultural advantage were to be found,") it is moreover stated (in another passage which your Lordship has also seen, p. 483,) that "the settlers were found oftener employed in carousing in the fronts of their houses, than in labouring themselves, or superintending the labour of their servants on their grounds."

Thus much as to the degree of pecuniary interest on the part of the master, and the quantity and quality of the effect it may be expected to have on the pecuniary value of the labour of the convict servant. But (setting aside rare and extreme cases, such as that of labour extorted in such excess as to shorten the thread of life) the moral interest of the convict bondsman, and the pecuniary interest of the purchasing master, will (we may venture to say) be found pretty exactly to coincide; since the more steadily a man's time and thoughts are occupied in profitable labour, even though the profit be not his own, the more effectually they will all along be diverted from all unlawful objects. The general consequence is, that while the fortune of the master is receiving improvement from the labour of the once criminal workman, the moral habits of the workman himself will in the same proportion be receiving improvement from the same cause.

Two circumstances—two disastrous circumstances—have in a greater or less degree been common to transportation-punishment, under both its forms: in point of comfort, the condition of each convict under and during the punishment has been matter of pure contingency; while, in point of morality, his reformation, depending upon the same unforseeable events, has been left alike to be the sport of fortune. In both respects, happiness and morality, his condition has been thrown altogether out of the view of every eye in the country, under the laws of which, the discipline such as it was, had been administered—of the legislature by which the species of punishment had been selected and allotted to the species of offence—of the judges and the executive government by whose authority the individual had been consigned to that species of punishment—of that public which has so important an interest in the efficacy of every punishment, as well in the way of reformation as in the way of example, not to mention the interest which, on the score of humanity, every community has in the well-being of the meanest of its members. Under the transportation system—under that system in both its forms—the state of the convict, in relation to all these essential points, was and is, under the former by *dispersion*, under the latter by *distance*, thrown as it were purposely into the shade. Under the panopticon system, and that alone, light—the clearest and the most uninterrupted light—takes place of all such darkness. Considered with a view to moral health, as well as to physical comfort, a Panopticon is a vast hospital; but an hospital of that

[a] II. Collins, p. 40.

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although operations purely physical may (as I have had already occasion to observe) be among the means employed, and with assured efficacy, in that view. In the other case, body operating upon body is sufficient to the task. This observation may serve to explain the ground of whatever little portion of thought can possibly have been concerned, in the choice made of New South Wales. In a plan in other respects proper and adequate, simplicity is unquestionably a recommendation of no mean importance. But it will neither stand in lieu of *efficacy*, nor atone for *injustice*.

When, for persons of the description in question, the obtainment of the accustomed situations in America was found to be, or supposed to be, or said to be, no longer practicable, another spot came to be looked out for, and the spot chosen was this new discovered and pre-eminently distant region, that had been christened, or new christened, New South Wales.

The word *distant*, were it not for the appearance of affectation, should have stood in capitals. In it will be found not only the grand recommendation of the plan, but the only assignable or so much as imaginable property, which, though it were but for a moment, can have presented itself in that light. Of the several efficient causes of probable reformation to be looked out for in a colony, as having actually been afforded by the *old* colonies as above, not a single one could have been found existing anywhere in this new-found land. Existing demand for bondsmen—for bondsmen to be employed in separate families — in a ready-formed community composed of men of thrift — with an opportunity of settling in a society of the same complexion on the return of independence — conveyance thither at an inconsiderable expense, or without any expense; — all these requisites were altogether wanting, together with all others that can be imagined.* *Distance* — the indisputable attribute of this favourite spot — *distance*, the supposed mother of *security*, was the virtue which it is evident was regarded as making up for the absence of every other. Of this attribute it was seen to be possessed in a degree altogether beyond dispute. The moon was then, as it continues to be, inaccessible: upon earth there was no accessible spot more *distant* than New South Wales. The security that had been afforded by America in this respect, the security against the return of the expelled emigrants, had been but an incomplete one: why? because the *distance* was comparatively so small; means of communication accordingly so abundant. The security, promised in that same way by New South Wales, was the best possible: why? because the distance was the greatest possible; means of communication already established, none; and such as for this purpose would be to be established, would be to be established by government itself: consequently (it was taken for granted) would be altogether at the command of government. From such premises, the conclusion, true or false, was obvious enough: *Let a man once get there, we shall never be troubled with him any more.*

Setting aside law and justice, the expedient was at any rate a plausible one: and except the revolutionary *noyades* and *fusillades*, the Calcutta black-hole, and a few other such foreign devices, a remedy against living nuisances could hardly be more promising or more simple. But suppose for a moment any such considerations as those of *law* and *justice* to be entitled to a place in the account, surely never did *this* country witness an exercise of power more flagrantly reprehensible, more completely indefensible.

In the design of it, if this were really the design of it, it amounted to neither more nor less than the converting at one stroke all inferior degrees of the species of punishment in question, into the highest — all finite lengths into one infinite length. In its conception, the operation is simple enough: banishment for life — for so many years as a man shall live — is as easy to conceive as banishment for any other number of years, fixed or limited; more so than banishment in different lengths, for different numbers of years. But the effects of it upon the legal system, which it was thus sporting with, would take a volume to delineate. All the distinctions which, under this head, the statute-book affords in such numbers, between punishment and punish-

improved and hitherto unexampled description, in which, without prejudice to the management, and thereby to the efficacy of the regimen, the condition of the patient is at all times open to all eyes. In this home scene, neglect is as impossible, as any sufficient attention is in the distant one.

Among savages, when to a certain degree a man is sick in body, he is cast forth, and thought no more of. In a nation civilized in other respects, the same barbarity is still shown to this at least equally curable class of patients, in whose case the seat of disorder is in the mind. Not indeed to every division in this class. For patients labouring under insanity, known and characterized by that name, no man has yet prescribed a voyage to New South Wales. The inefficacy of such a prescription, however, could not be more complete in the case of that description of patients, than it has hitherto been, and from the nature of the case ever must be, in the instance of the other description to which it continues to be applied.

* I mean of course with reference to the only declared objects of the measure: for as to mere existence, requisites with relation to that object—such as *climate* affording sufficient warmth, and *earth* affording the usual choice of soil—these, however material in *other* points of view, were mere blanks with reference to the objects professed on this occasion to be aimed at.

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ment — adjusted with so much care to so many corresponding distinctions, real or supposed, between guilt and guilt — all this elaborate pile of distinctions, which for near a century and a half the legislature had been employing itself in building up, was upon this plan to be undermined and levelled at one blast.

In the whole body of the law, if effects are regarded, and not mere *words*, where shall we find a feature that bears any the least resemblance to this case? I protest I know not. A punishment has been precisely fixed by law — fixed not in *species* only, but in *degree*: fixed thus by each particular law upon the species of delinquency, it has been fixed afterwards upon each individual delinquent by a sentence grounded upon that law. The fixation thus performed, there comes upon the back of it another punishment — a punishment of prodigiously greater magnitude — a punishment added by one knows not who, added by an invisible hand, added by the hand of power (for in default of literal designation we must resort perforce to figurative) — added by the hand of power, without a hearing, and to all appearance without thought. In truth, so oblique was the course by which the object was pursued, that no adequate idea of it can possibly be conveyed by any concise form of words: a description of it will be attempted a little further on.

For a measure of this stamp, in what quarter of the English law can a precedent be looked for with any prospect of success? One case there is, in which after a verdict of conviction and damages found by a jury, the court, if they they think fit, have it in their power to increase the damages. It is the case of *mayhem*: I mention it as the nearest case, though at so wide a distance. Even in that case, not an atom of suffering is imposed upon the injurer, that is not in the shape of compensation converted into enjoyment for the benefit of the party injured. But so strange is the institution to an English eye, so incongruous to the spirit and general tenor of English law, that this singular instance of an apparent extension of punishment or something like punishment, after sentence or what is equivalent to sentence, would scarcely have been thought of but for its singularity, having scarcely ever, within my memory, been brought to view by practice.

For a lot of punishment to be *cut down*, cut down by royal prerogative, from the length marked out by law, to a length short of that which has been marked out by law, is a case common enough — a case within every day's observation — a case but too common, were it not that in this quarter of the law, unhappily so loose and incongruous is the texture of it, as to render it matter of praise, perhaps even of merit, on the part of one of the three estates of the legislature, to make changes, even regular and habitual changes, in the work executed at former periods by the whole. Be this as it may, the case of rigour *short of the law* is in every day's experience. But of rigour *beyond the law*, this surely may be set down for the first (as I dare hope it will prove the last) example. When the work of mercy and lenity is performed as above by the king's prerogative, it is performed in retail — performed by a separate decision pronounced in each individual case. Where, by an abuse of the same sacred instrument (an abuse, the nature and progress of which may perhaps receive a more particular explanation in another place,) the work of *rigour* has been performed as here, it has been performed by *wholesale*; in a word, in the same summary and compendious style as that of the *noyades* and *fusillades* above mentioned.

In speaking of a *rigour beyond the law*, I must take the liberty of warning your Lordship against a wrong reading, which otherwise might have been suggested by preceding recollections. *Rigour* is the word here, not *vigour*: — not to vigour — not to anything like what is commonly understood by *force* — but rather to *fraud* — to the very opposite of open and manly force — belongs the credit of whatever is done in the way of *rigour* in the present instance.

"Oh but," I have heard it said, "whatever may here be done, the law remains unchanged; rights remain untouched; rights remain inviolate. Now, as before, so long only as a man's term of transportation continues, does his return to Britain stand prohibited: now, as before, the term ended, the prohibition is at an end. Let him come back then, if he choose it; nor, if he is able, is there any law to hinder him: no more law to hinder him, than if, in execution of his sentence, he had been conveyed to America, as in former times."

I answer, so far as actual prohibition is concerned, legality out of the question, the fact is not precisely so; but of this afterwards. Supposing it were so, the plea might indeed serve, if *words* alone were of any importance — if *effects*, and such in particular as consist in human suffering, were not worth notice. When laws are issued, to what end are they issued, but to that of producing certain effects? When a law is issued, prohibiting a man from coming into a certain place, to what end is it issued but to that of preventing him from being there?

In both cases — in the supposed case of prohibitive law, and in the actually exemplified case of a system of coercion applied some how or other without the intervention of a prohibitive law — the object aimed at is the same. In both cases, it is *prevention* — prevention of the return of the individual or in-

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dividuals on whom sentence of banishment has been pronounced. In both cases, it is by the opposing of *obstacles* to the deprecated event, that the prevention of it is aimed at. Thus far the two cases run together: where then lies the difference? In the supposed case, the obstacles employed are of that sort which, in the very nature of the case, are at all times liable to be surmounted, and in experience are in fact but too frequently surmounted: mere threats, mere words, by means of which an influence is endeavoured to be exercised over the *will*. In the really existing case, the obstacles employed, supposing them actually applied, are, in the very nature of them, insurmountable: absence of the necessary means and instruments of self-conveyance. In the one case, it is the *will* only that is practised upon: in the other case, the very *power* is taken away, or endeavoured at least to be taken away. In short, for what reason is it that physical obstacles have thus been preferred to moral ones? why? but because those physical means were regarded as more sure. In both cases, so far as obstacles of any kind are opposed to the exercise of the obnoxious act, the right of doing it is infringed to every substantial purpose. In the case, where the obstacle is most powerful, so far is the right from not being infringed, that it is in this case surely that the infringement is most complete.

Suppose it a case between individual and individual. Let us borrow *Ugolino* for a moment from Dante and Sir Joshua. A strong man has thrown a weak man into a dungeon, turned the key upon him, and left him there to starve: not a syllable to forbid his eating, not a syllable to forbid his coming out. The wretch lives for a week or so, and then expires. Physical obstacles, which rendered it impossible for him to escape and live, are employed in preference to ineffective threats. What follows?—that while he lives, it is not false imprisonment? that when he dies, it is not murder? No; but that the imprisonment is so much the more rigorous, the murder so much the more barbarous.

In this *feigned* case, it was by the strong man that the weak man was forced into the cave of death. In the real case, it is by authority of the law, that men by hundreds and thousands have been forced into New South Wales. If in this but too *real* case, staying there for life, because return has, with this express view, been rendered impracticable—if, while thus kept there for life, their stay there is not to be imputed to those who, in that view, sent them thither—then, neither in the *feigned* case, is the death of the prisoner to be imputed to the man, whom no one I suppose that thinks of the case, will scruple to call his murderer.

The mode of proceeding chosen in the view of securing the proposed effect, was of a piece with the effect itself. Had an act of parliament been passed, abrogating *pro tanto* in the lump the whole system of the transportation laws, and declaring that, in future, in whatsoever case transportation should be provided, nominally for this or that term of years, in effect the banishment should be for life, the measure would have been a severe one: it would have worn the appearance of an inordinately severe, and not very well considered one; but still, in respect of the course pursued for the accomplishment of it, it would have been an unexceptionable one. For in this case, being to be established by the direct authority of the legislature, and in the express words of the legislature, it could not but have been submitted to the legislature, submitted in its own genuine shape and colour, and, in that shape and colour, passed through all stages and all forms.

Unexceptionable in the *mode*, unexceptionable in point of *form*, the measure would not have been the less exceptionable in point of *effect* and *substance*. So palpably exceptionable, that I almost fancy your Lordship rejecting it as incredible, and saying to me, "Why encumber the argument thus with improbabilities? why perplex it with extreme cases?"

My Lord, if this be not precisely what was done, at any rate, this and more, and worse (your Lordship has seen already,) was actually done: done—or at least, so far as this was the real design and object of the settlement, endeavoured to be done. To give a particular and precise delineation of the course that was taken for doing what was done, would be a digression here, and must be referred to another place. To speak in generals—what was done in this behalf, was done by administration, by a sort of *surprise*, not to say *fraud*, upon the legislature. By an act of 1779, the same by which parliament supposed itself to have established the penitentiary system—by this act, in a hasty clause suggested by the exigency of the moment, the system then regarded as the preferable one not being capable of taking effect for some time, power was given to change the *locus ad quem* in transportation, from the *quondam* colonies in America, to any other place "beyond the seas;"* less latitude not appearing sufficient to insure to the transportation system even that temporary continuance which was all that was then intended for it. The evident object of that act was, to continue that mode of punishment upon a footing as near as possible to that on which it had stood ever since it was first instituted. Observing the latitude given for this purpose in the act, the founders of New South Wales laid hold of it, and upon the strength of it changed

* 19 Geo. III. c. 74, § 1.

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the real nature of the punishment, and placed it upon a footing as different from any footing on which it had ever stood before—as different from any that had been in contemplation of parliament,—in all essential particulars as widely different (your Lordship has seen) as possible. Of a measure, thus legal in form, thus illegal in spirit and in substance, one knows not well what account to give. It is and is not the act of the legislature. The *power* of parliament was applied to it: the *will* of parliament was *not* applied to it. Neither the will nor understanding of parliament had had any cognizance of what was done. Parliament was dealt with by administration, as a man would be dealt with by an attorney, who should give him a lease for life to sign and seal, telling him it was a lease for years.

True it is, that after the choice was made, and New South Wales was fixed upon—true it is that then, under colour of a clause in a later act,* but to the same effect, a fresh act was obtained from parliament,† an act of which the object, and even the sole object, was the foundation of this new colony. By *foundation*, I mean the doing all that was thought fit to be proposed to be done by parliament for that purpose, viz. the creation of powers for the organization of one *judicial court*: on the subject of *legislative power*, an inviolable silence being preserved, for reasons which I may have occasion to speak of in another place. But this fresh act, in which not a syllable was said of any of the existing transportation acts, nor of the virtual extension which the several transportation terms respectively created by them were destined to receive—this fresh act was but the produce of a fresh fraud of the same kind, coming upon the back of the former fraud, and committed in support of it. From the very tenor of the act, as well as from a variety of collateral circumstances relative to it, your Lordship will (I dare venture to say) see the allegation put out of doubt: the inquiry, I am inclined to think, will not be altogether an uninteresting one; but, as already intimated, it must wait for another place. What I acknowledge accordingly is, that the choice made of that situation has the authority of parliament for its sanction, and in so doing I acknowledge it to be *legal*. But what I assert and undertake to show is, that the mind of the legislature has never gone with it: and thence it is that, in speaking of it, I may here and there have suffered my pen to run on with a degree of freedom, such as, had I considered it as substantially the act of the legislature, my respect for so sacred an authority might scarce have permitted me to assume.

Thus it is, that for authorizing in express terms the conversion of all finite lengths of transportation-banishment into infinite, no act of parliament was in fact passed or intended to be passed: but what was intended, and in part accomplished, and this under colour of an act of parliament (viz. the act just mentioned) was, that the fate of the wretches in question should be exactly the same as if an act of parliament to that effect had really been passed. Judges were accordingly to continue, and have continued with the accustomed gravity, sentencing men to transportation for fourteen years, or for seven years, or for any number of years not greater than seven, or for any number of years between seven and fourteen (for thus stands the law in some cases,) understanding or not understanding, that under a sentence of transportation for seven years, the convict was to continue in a state of banishment from his native country—in a state of confinement within the limits of that unknown country—for the remainder of his life. Parliaments were to go on in the same strain, establishing the same distinction in words, and with the same determination on the part of the servants of the crown, not to suffer any of those distinctions to be carried into effect. In the case intended to be realized, and in the case above supposed, but rejected as too bad to be supposed, the indiscriminating rigour, the groundless oppression, are just the same: the difference is, and the only difference, that in the imaginary case, the rigour, the oppression, stands clear of fraud—in the actual case it is defiled by fraud, by fraud aggravated by a solemn mockery of the forms of justice: a fraud organized by the servants of the crown, and forced upon the judges, who have it not in their power to refuse the part they act in it.

Nor yet was it by a mere fraud—the fraud of conveying a man, under colour of an act which meant no such thing, to a place from which no prohibition (it was hoped) would be necessary to prevent his return: it was not in this simple way alone that measures were taken for that purpose. Positive orders your Lordship will see issued, addressed to men whose punishment was expired, prohibiting them from leaving the colony in express terms—orders issued in full and direct contempt of the several laws of partiament on which the punishment had been grounded. But of this in another place.

Nor is this all—for in this cluster of abuses was involved, at the outset of the business, the monstrous, and in this country almost unexampled iniquity of an *ex post facto* law: nor yet a mere *particular ex post facto law*, such as that which, under the name of *privilegium*, has been consigned by Cicero to infamy, but a general *ex post facto law*: a law of this most odious cast, established upon a

* 24 Geo. III. c. 56, § 1.
† 27 Geo. III. c. 2.

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wide extending scale. At the outset, convicts were found by hundreds, lying under sentence of transportation, for terms of different limited lengths, from seven years or under, to fourteen years. In all these instances, to a punishment appointed according to law and by a legal sentence, was superadded, or at least endeavoured and thought to be superadded, a punishment of much greater magnitude, inflicted, or at least meant to be inflicted, silently and without sentence: a punishment for the remainder of life, superadded to a punishment for years.

If among the group of convicts whose sentence has consigned them to a hulk, so much as a single individual were to be confined by the hulk-keeper with or without an authority from a secretary of state, that secretary of state acting therein with or without an authority from the council board — if in this way a portion of punishment, though but for a month, were to be added to the length of punishment appointed by the law, what a sensation! what an outcry! Nor yet surely without cause. Here — not in one instance only, but in hundreds of instances at once — to a punishment, of from fourteen years down to one year or less, is superadded a punishment of the same kind for ninety-nine years (to express the duration by the phrase used by lawyers to express it,) *for ninety and nine years, if* in each instance the wretch *shall so long live.*

I do not mean to say (for the case is not exactly so) that in effect there is no difference at all, between the lot of him whose sentence is for seven years and that of him whose term of transportation is for life: no, not even supposing them both to remain for life in the common scene of their intended fate. *Transportation* is indeed the punishment named by the law in both cases: — transportation, *i. e.* banishment, and that, intended to continue for life, is thereupon the punishment they are alike doomed to in both cases. But to mark the distinction between the two lots, here comes in the necessity of taking a second glance at another abuse, which has been already touched upon, and for which the only apology that could ever have been made is, that it was an ancient one. *Transportation* is the word used alike for all transportable convicts in the act of parliament: *Transportation* is therefore (I take for granted) the word that has been used for all alike in the judicial sentence or order, in virtue of which, in execution of these acts, the convicts have been sent abroad. Yet somehow or other, so it has been in practice, that under the same provision in the act, and under a judicial sentence or order couched in the same terms, *transportation* has been (as your Lordship has seen) to one man, simple banishment; to another man, banishment aggravated by bondage: as if to men in general, and in particular to men of British blood, the difference between bondage and liberty were a matter not worth speaking about.

This being the case, as to such part of the suffering, as (in the cases of two convicts sentenced to different lengths of transportation) is imposed by the express appointment of the law (I mean the simple banishment,) the extension thus given, under the present system, by this clandestine act of power, is in both cases really the same: what difference there is, lies in a point overlooked by the law, overlooked from the very first, as not worthy of its notice. The banishment — I mean the simple banishment — the mere continuance in the destined scene of banishment, *is*, or at least is *hoped*, and, by all who can find anything to say for the measure, *expected* to be in both cases for life: the only part of the punishment that has a different termination in the two cases is the *bondage:* the accidental accompaniment which the law in its wisdom has never yet looked upon as worth mentioning or caring about.

The *bondage* does not receive, nor therefore was meant to receive, any prolongation, at least any regular and avowed prolongation, from the choice made of New South Wales:* it is the *banishment* alone that does. But the banishment is the only part of the punishment which the statute law either speaks of in that light, or takes any care for the enforcement of: *the bondage* comes in by the bye: it was put in only to save charges.†

* The caution which dictated the words, "*at least any regular and avowed prolongation,*" was not a groundless one. In the so often quoted history of the colony, and especially in the continuation of that history, instances where the bondage has been prolonged, regularly or irregularly, are to be found to no inconsiderable amount. By "*avowed,*" I meant of course avowed by the supporters or advocates of the penal colony here at home: in the colony, whatever is done in this way by the governor, cannot of course but be avowed *there*, avowed by the governor by whom it is done.

† By the old transportation laws, the person who shall contract for the transportation of the convict, is declared to "have a property in his service,"[a] and that property is made transferable to "*assigns,*" and, for the sake of what was to be got in America by the sale of that property, contractors were, latterly at least, if not from the first, ready and willing to take upon themselves the charge of the transportation, without further recompense. Under the modern transportation laws,[b] the same form of words is still copied, the practice under them being (as already stated,) as far as the condition of the convict at least is concerned, as different as possible. In saying "*the form of words,*" I mean so far as concerns the giving to the transporter and his assigns, a property in the service of his passengers; though (as everybody

[a] 4 Geo. I. c. 11, § 1. [b] 24 Geo. III. sess. 2, c. 56, § 1, 13; 28 Geo. III. c. 24, § 5.

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In speaking of the prolongation thus given to all these different lengths of banishment, a point I have all along been careful to keep in view, is the distinction between *design* and *execution*, between the effect intended to be produced and the effect actually produced. In its intention, it has to all alike been banishment for life. In effect, what has it been? To some perhaps what it was intended to be: to others, to many others, no such thing. For, not even at the first moment, at the time when the difficulty of evasion was at its highest pitch, did the effect come up with any uniformity to the intention: and the longer the punishment continues in use, the further and the further will it be from the attainment of this end. Many whose terms are expired, and who, with whatever views, pant for the exercise of those rights to which the law, as if it were in derision, pretends to have restored them, do indeed remain debarred from the exercise of those rights, according to the intention of those who devised and organized this plan of perfidy. But many — more, in abundance, than these politicians could have conceived — escape from this scene of intended annihilation, to afflict their mother-country a second time with their pernicious existence.

Then it is, that this expelled, this fruitlessly expelled mass of corruption — then it is, that (instead of putting on incorruption, as it was expected to have done by miracle, without any human means provided for the production of the effect,) it is found (as your Lordship has seen) to have put on a worse corruption, if possible, than before.

The price, in the way of injustice — the whole price is thus paid for the expected benefit: and it is but in an imperfect degree that the benefit is reaped. The proportions of penal justice are confounded; the poison of perfidy is infused into the system of government; and still the obnoxious vermin remain unextirpated.*

knows) at the end of the voyage there is nothing to be got by selling them, nor so much as any person to whom they can be sold; the transporter being paid, not by a purchaser in any such sale, but by government itself. — *Quere the first.* By what law does the governor exercise the power he takes upon himself to exercise in New South Wales over the convicts during their terms? Is the property of the service of each convict assigned over to him by the merchant-transporter under his contract? — *Quere the second.* By what law does the commander of a king's ship (the Glatton for instance) take upon himself to transport convicts? Is he made to sign a contract for the transportation of these his passengers, as an independent merchant would be for the performance of the same service? If the formality of a contract is employed, where is the legality? if not, where is the honesty of the practice? Powers obtained from parliament for one purpose are employed for another, and that an opposite one: powers given for the institution of domestic bondage, under management on private account in single families, are applied to the institution of public bondage, under management on trust account in gangs. Whoever said anything to parliament, of this radical change passed through Parliament under cover of the identity of the words?

* I. *No care taken in England, for four years and a half, to prevent unlawful returns: care then taken to prevent lawful ones.*

No. 1. *August* 1792, pp. 229, 230. — "During this month the governor thought it necessary to issue some regulations, to be observed by those convicts whose sentences of transportation had expired. The number of people of this description in the colony had been so much increased of late, that it had become requisite to determine with precision the line in which they were to move. Having emerged from the condition of convicts, and got rid of the restraint which was necessarily imposed on them while under that subjection, many of them seemed to have forgotten that they were still amenable to the regulations of the colony, and appeared to have shaken off, with the yoke of bondage, all restraint and dependence whatsoever. They were therefore called upon to declare their intentions respecting their future mode of living. Those who wished to be allowed to provide for themselves were informed, that on application to the judge-advocate they would receive a certificate of their having served their several years of transportation; which certificate they would deposit with the commissary, as his voucher for striking them off the provision and clothing lists, and once a-week they were to report in what manner and for whom they had been employed."

"Such as were desirous of returning to England were informed, that no obstacle should be thrown in their way, they being at liberty to ship themselves on board of such vessels as would give them a passage. And those who preferred labouring for the public, and receiving in return such ration as should be issued from the public stores, were to give in their names to the commissary, who would victual and clothe them, so long as their services might be required.

"Of those here and at Paramatta, who had fulfilled the sentence of the law, by far the greater part signified their intention of returning to England by the first opportunity; but the getting away from the colony was *now* a matter of *some* difficulty, as it was understood that a clause was to be inserted, in all *future* contracts for shipping for this country, subjecting the masters to certain penalties, on certificates being received of their having brought away any convicts or other persons from this settlement without the governor's permission; and as it was not probable that many of them would, on their return, refrain from the vices or avoid the society of those companions who had been the causes of their transportation to this country, *not many could hope to obtain the sanction of the governor for their return.*"

No. 2. *February* 1793, p. 268. — "A clause was inserted in the charter party, [of the Bellona] forbidding the master to receive any person from the colony without the express consent and order of the governor." [The day mentioned as the day of her sailing from England, is the 8th of August 1792.]

II. *Return without permission easy: — Return, not Settlement, the general object.*

No. 1. *October* 1793, pp. 315, 316. — "Seven

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Your Lordship sees below how large, how indefinite, the number is of these exiles, that may be expected to return: the number of all descriptions: of those, whose return the governor may have been willing to *permit*, of those, whose return the governor may have been *not* willing to permit; of those, whose return he may have been willing to *prevent*, according to law; of those, whose return he may have been willing to prevent, contrary to law.

On this head, two further considerations may be not altogether unworthy of notice: one regarding *number* again — the other, *quality*.

As to *number* of returners, whatever it may have been hitherto, it may naturally be expected to be greater and greater, the longer the establishment continues: because, the longer it continues, the greater the population of it may be expected to be, and, on that and other accounts, the greater the number of vessels that touch there in a year, whether for the purpose of bringing in more convicts, or for any other purposes; whether belonging to this country or belonging to other countries.*

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persons, whose terms of transportation had expired, were permitted to quit the colony in these ships, and the master of the Sugar Cane had shipped Benjamin Williams, the last of the Kitty's people, who remained undisposed of. One free woman, the wife of a convict, took her passage in the Sugar Cane.

"Notwithstanding the facility with which passages from this place were procured (very little more being required by the master than permission to receive them, and that the parties should find their own provisions,) it was found, after the departure of these ships, that some convicts had, by being secreted on board, made their escape from the colony; and two men, whose terms as convicts had expired, were brought up from the Sugar Cane the day she sailed, having got on board without permission; for which the lieutenant-governor directed them to be punished with fifty lashes each, and sent up to Toongabbe."

No. 2. *October* 1793, p. 320.—"Charles Williams, the settler so often mentioned in this narrative, wearied of being in a state of independence, sold his farm, with his house, crop, and stock, for something less than £100 .... James Ruse, also, the owner of the experiment farm, anxious to return to England, and disappointed in his present crop which he had sown too late, sold his estate, with the house and some stock, (four goats and three sheep) for £40. Both these people had to seek employment until they could get away; and Williams was condemned to work as a hireling upon the ground of which he had been the master .....

"The greatest inconvenience attending this transfer of landed property, was the return of such a miscreant as Williams, and others of his description, to England, to be let loose again upon the public.

No. 2. *July* 1794, p. 382.—"The Hope sailed this month for Canton, the master being suffered to take with him one man, John Pardo Watts, who had served his time of transportation."

No. 3. *November* 1794, p. 398.—"This man [the master of the Revolution] had been permitted to ship as many persons from the settlement, as he had stated to be necessary to complete his ship's company; notwithstanding which, there was not any doubt of his having received on board, without any permission, to the number of twelve or thirteen convicts, whose terms of transportation had *not* been served. *No difficulty had ever been found by any master of a ship, who would make the proper application, in obtaining any number of hands that he might be in want of;* but to take clandestinely from the settlement the useful servants of the public, was ungrateful and unpardonable."

No. 4. *December* 1794, p. 400.—"The master of the transport [the Dædalus] had permission to ship twelve men and two women, whose sentences of transportation had expired."

No. 5. 18*th September* 1795, p. 429.—"We found after their departure, [that of the ships Endeavour and Fancy] that notwithstanding so many as fifty persons, whose sentences of transportation had expired, had been permitted to leave the colony in the Endeavour, nearly as many more had found means to secrete themselves on board her."

No. 6. *February* 1796, p. 457.—"In her [the Otter] went Mr. Thomas Muir .... and several other convicts, whose sentences of transportation were *not* expired."

No. 7. *March* 1796, p. 469.—"The Ceres sailed .... for Canton. Being well manned, the master was not in want of any hands from this place; but eight convicts found means to secrete themselves on board a day or two before she sailed."

See further, Supplement. Besides the natural facility of returns, lawful or unlawful, two other points may have been noted in this part of the case: the care *not* taken in the first instance, as to the prevention of unlawful returns: — the care taken afterwards for the prevention of lawful ones. But of this more particularly in another place.

* Now, lately, a king's ship (the Glatton, formerly of 54 guns) has been appointed, I see, to the service, instead of a contracting merchant's vessel, as before. Amongst other advantages, this course, as far as it is pursued, may reasonably be expected to put an end to the unpermitted emigrations. But the other channels will remain open; unless it should be thought fit to shut up the ports of New South Wales like those of Japan: an expedient which would cut up by the roots every idea of *trade*, and profit in the way of trade, the great object looked to, or professed to be looked to, in all *colonies*. See the head of *Economy* — Colonial advantages.

Whether this preventive effect was among the considerations that gave birth to the change, I do not pretend to know: one should rather hope it were not. The observation still remains in full force, that in this way nothing can ever be gained, that is not gained at the expense of law and justice. If by a re-importation at the public expense, the banishment of these exiles were made regularly to cease, as soon as it ceased to be legal — on these terms, and no others, the exclusion of all other means of return might (whatever became of trade) be reconciled to justice. *Nullus liber homo.....exulet.....nisi per legale judicium parium suorum vel per legem terræ.*— Violating this right by *deeds*, while it is allowed in *words*, is tearing *Magna Charta* to pieces, to patch up a bad measure of police.

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TABLE OF CONVICT EMIGRATION:

Showing the Number of Convicts that, in about five years and a half, viz. from 22d August 1790 to March 1796, are reported by the late Judge-Advocate as having quitted, or attempted to quit, New South Wales: distinguishing whether with or without permission of the Governor, and if without, whether *Expirees* (persons whose sentences were expired) or *Non-Expirees*.

No.	Page.	Time.	Vessel.	Quitted— With Permission.	Quitted— Without Permission. Expirees.	Quitted— Without Permission. Non-Expirees.	Prevented. Expirees.	Prevented. Non-Expirees.
1	130	22 Aug. 1790.	Neptune	...	...	...	2†	1‡
2	136	26 Sept. 1790.	Open Boat	...	...	5	...	...
3	156	28 Mar. 1791.	Open Boat	...	1	8	...	...
4	190	3 Dec. 1791.	Albemarle & Active	...	"Some"	"Some"	...	...
5	268	19 Feb. 1793.	Bellona	2	...	...	2	2
6	283	24 April 1793.	Shah Hormuzear & Chesterfield.	5	...	...	...	...
7	290	4 June 1793.	Kitty	11	...	...	...	...
8	315	13 Oct. 1793.	Sugar Cane and Boddingtons	7	...	"Some"	2	...
9	398	9 July 1794.	Resolution	Some.*	...	13	...	...
10	400	15 Dec. 1794.	Dædalus	14	...	...	...	...
11	429 461	18 Sept. 1793.	Endeavour and Fancy	50	...	nearly 50	...	...
12	457	18 Feb. 1796.	Otter	...	...	"Muir & several others."	...	8
13	469	Beginning Mar. 1796.	Ceres	...	...			
				‖89	‖1	‖76	6	11

* "As many as were necessary to complete the ship's company," exclusive of the unascertained ones. † Of whom one flogged. ‡ Flogged. ‖ These totals give the ascertained numbers.

From the inspection of this Table result the following observations:—1. Considering that in the list of Non-expiree escapers, there are three parcels in unascertained numbers, for one which there is in the list of Expiree escapers, there seems reason to think that the number of these emigrants to whom the liberty of departure had *not* been thought fit to be allowed, was little if at all inferior to the number of those to whom that liberty *had* been thought fit to be allowed. What would be said of the plan of safe custody pursued at home, if from Newgate the escapes were found to be as many as the pardons? 2. Among those who in ascertained numbers obtained this liberty by their own forbidden exertions, without permission from above, the number of those who had *not* a right to it was 76 times as great as of those who *had* a right to it. 3. Among those who in ascertained numbers having a *right* to this liberty, attempted to exercise it, the number of those who *failed* was six times as great as of those who *succeeded*. 4. Of the two individuals who were at the same time *flogged* for an unsuccessful attempt to exercise this liberty, one had, by the laws under which he had been sent thither, as good a *right* to it as those by whose orders he was flogged.

The consequence is, that the greater the use made of the colony in this or in any other way—the greater the increase of it in wealth as well as population—the greater, in a word, the degree of "*improvement*" it receives in all other points of view—the more incapable it becomes of answering the expectations formed of it, in regard to this its primary object—the more unfit, with reference to this the only real and substantial use that anybody has ever seen or professed to see in it.

Already has an open boat been known to furnish the means of escape; and that through the vast space between New South Wales and Timor. One of these days, as stations multiply, and the coasts become more and more difficult to guard, we may expect to see better boats, stolen or even built, for voyages of escape to Otaheite or some other of the many shorter voyages, with the help of a seaman or two to each of them, to command it.

Lastly, as to the *quality* of the persons—the sorts of characters, I mean, whose return may in the greatest proportion be expected. These are precisely those, from whom, on one account or another, the most mischief is to be apprehended. The species of delinquents, who with the greatest certainty can

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command the means of their return, are those who occupy the highest ranks in the hierarchy of criminality; the men of science and connexion among depredators; the master-dealers who have accumulated a capital out of the profits of their trade; the receivers of stolen goods, those wholesale merchants who, by the very nature of their prolific department in the division of criminal labour, are, in a swarm of connected depredators, what the queen bee is in the hive.

It is the indigent, and unconnected malefactor alone, that stays there, for want of the means of buying his way back: among these, it is the unenterprising, and thereby the least dangerous species of malefactor, that will be most apt to stay there, for want of being able to employ with success those means of escape, which his more ingenious, or more audacious, and on either account more dangerous comrades, make such abundant and successful use of.

In the contemplation of the beauties of the colonial establishment, your Lordship has almost lost sight (I doubt) of the establishment sacrificed to it, and the parallel that was to be kept up between the favourite and the discarded measure.

During the continuance of the penal term, at any rate, the advantage, so far as the article of *incapacitation* for fresh offences is concerned, may, I flatter myself, be stated as being clearly enough on the side of the penitentiary establishment. Even in an ordinary prison, an escape is not a very *common* incident: under the new and still more powerful securities of so many sorts, superadded to the common ones, in a prison upon the panopticon plan, I have ventured to state it as, morally speaking, an *impossible* one.

After the expiration of the penal term, the part of the penitentiary house at home, so far as prevention of future delinquency is concerned, becomes, in comparison of that of the colony at the antipodes, I must confess, but an under part. My means would have had for their limits those of law and justice: I could not have added an illegal indefinite punishment to a finite legal one; I could not have flogged men for the exercise of their rights. I am not a ———, to tread upon the law. No, not in any case: so that how little soever he may have done in this way, in comparison of what he meant to do, that little will always be so much more than could in this way have been done by me.

For *reformation* indeed (as your Lordship has seen) I had strong means, and even *physical* means: but as to absolute *incapacitation*, incapacitation with regard to future mischief, physical means (I must acknowledge) fail me. It was on reformation (I must confess) I had placed my first reliance: first in order at any rate — and it was not a weak one. *Drunkenness*, in the "improved colony," universal: in a panopticon penitentiary house, impossible. *Religious exercise—there* odious, and generally eluded: *here*, uneludible, and by every imaginable and becoming device rendered as inviting and interesting as possible. *Profitable employment — there* again odious, in a great degree eludible, and eluded as much as possible; *here*, uneludible again, and by diversification (the opportunities of which would be abundant) and choice, as far as choice is admissible, rendered from the first not odious, and, by habit and universal example, easy and even agreeable.

After emancipation, profitable employment — *there* not *wanting* indeed, but still generally irksome, because, under preceding habits, all along rendered so, by habitual sloth, drunkenness, and dissipation: *here* certain, and in whatever shape, habit, concurring with choice, may have rendered most agreeable, to bodies and minds invigorated by inviolable temperance.

Constituted as human nature is, it may be too much to expect, that even these securities should in every instance be effectual: but where they fail to be so, here presents itself, in dernier resort, *incapacitation*—absolute incapacitation with regard to any third offence, after conviction of a second: I mean of course by consignment to the penitentiary-house for life. Take away this instrument of incapacitation, and there remains (as at present) no other but the savage and unnecessary resource of death, or the ineffectual resource of transportation: transportation nominally, and frequently but nominally, for life.

Experience is a standard I never miss appealing to, so far as it can be employed. On one side, on the side of the penitentiary establishment, no direct reference can, unfortunately, be made to it. To afford experience, it must have had existence; and that it should not, gentlemen took effectual care. Yet, notwithstanding all their industry, added to all their negligence (for the article of *escapes* has shown your Lordship how difficult it is to distinguish the one from the other by their effects,) a testimony nearer to that of direct experience — of experience of the penitentiary plan itself — than could easily have been imagined, has actually started up: experience, though not precisely of that very instrument of security, yet of those means of security that are most like it, and stand next to it.

The characteristic principle of the colonization plan (loose confinement, without inspection) having been tried and found to fail — to fail as completely as it was possible for a principle to fail—one resource alone remained. This was the opposite principle, close inspection — inspection as close as there were means for making it; with or without confinement, also according to the means. A jail is not quite

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so easily built as talked of, not even in England, as I have had occasion to know but too well; still less in New South Wales, where even the makeshift dwelling-places could not be put together fast enough. A jail, however, being found to be the one thing needful—and among all countries most needful in that remotest of all accessible regions, to which delinquents were thus sent, on pretence of saving the expense of it—a jail, such as it was, was accordingly erected, as soon as it could be erected, and, moreover, as jail-room—room in a real immoveable jail—in that which, in the literal sense of the word, is meant by a *jail*—could not, with every exertion, be provided fast enough, a *succedaneum* to it was added—a sort of metaphorical ambulatory jail, in which the eye of an inspector, assisted or not by fetters, supplied, as well as it could, the place of prison-walls. The jail, as might have been expected—a jail built under such circumstances—was not always man-tight: it was, however, better than none at all, and, with all its imperfections (whatever they were,) was still the best and ultimate dependence.

This, then, was the real fruit of the establishment: to show (to such eyes, I mean, whosoever they may be, as are not self-condemned to incurable blindness,) to show its own perfect inefficacy, and the absolute necessity of that other establishment which, in its two different shapes, has twice been sacrificed to it, and in the vain hope of saving the honour of so many honourable and right honourable personages, still continues to be sacrificed to it. Such was the upshot of this grand Colony-founding expedition!—to save the expense of an originally improvable, and afterwards beyond all former conception improved, system of inspection-management: men sent off year after year by hundreds to the antipodes, to be kept without employment to corrupt one another under a sort of incomplete inspection-management in a makeshift jail, at an expense (for this too your Lordship will see) from twice to four times as great as that of the system sacrificed to it. Happily, on those terms, and at that distance, the necessary jail, such as it was, was built.* In New South Wales, under the law of fabricated necessity, as in Constantinople, under the *lex regia*, the will of the *Imperator* was the sole law—sole undisputed law—law not in name but in effect—law not to be dealt with like the law of Parliament—not to be trod upon, but to be obeyed. It was law paramount, my Lord, and without any *dispensing power*, such as (your Lordship will see) has been exercised in this country to overrule it. It being the legislator's interest, as well as that of every other honest man in the colony, that the jail should be erected, and his conception of his interest not being disturbed by imaginations, such accordingly was his will. A law was passed for the building of that jail, and (how incredible soever it may seem to honourable and right honourable gentlemen in this country, that a law for building a jail should find obedience) built it was.

In addition to the positive testimony of the fact, it seemed necessary that a demonstration should thus be given of the possibility of such an event, lest, without some such preparation, judging of the state of law and politics *there* by the state of law and politics *here*, your Lordship should have rejected it as incredible.

The testimony does not stop here. Not only among the convicts, who were transported to the antipodes to be kept in order, but among the soldiery that were transported with them to help to keep them in order, the root of all disorder was found to lie in a deficiency of inspection: and accordingly, whatever imperfect check was ever given to the disorder, was given to it by supplying that deficiency—supplying it either by inspection simply, or by inspection coupled with confinement, as the *causa sine quâ non* for rendering it sufficiently steady and effective.

In that land of universal and continually increasing corruption, the guardian class (as might have been expected) became corrupted by their wards. To stop the contagion, exertions on the part of the officers were neither deficient, nor yet successful. After years of ill success, what at last was the remedy?—a wall:—barracks, with "a high brick wall round them," or "an inclosure of strong paling," to answer the same purpose.†

Under the head of *Incapacitation*, one instrument I had like to have omitted, to the credit of which, the founders and conductors of this establishment have a most indisputable and exclusive title—and that is *death*. For keeping a man out of harm's way—out of harm's way in both senses—out of the way of doing it—out of the way of receiving it—the homely proverb is applicable in this case with indisputable propriety—*Stone dead has no fellow*.

In the course of about eight years and a half, from the 13th of May 1787 to the 31st of December 1795, convicts shipped 5196: died in the passage 522:‡ and all not told. Such care had the founders taken of their colonists, that, in the mere passage, without reckoning famines at the end of it, they had *decimated* them: more than decimated them, as per account, and the account is evidently an incomplete one, the article of deaths being left unnoticed in regard to *five* ships out of *twenty-eight*.

* I. Collins, p. 383.

† I. Collins, pp. 303, 455.

‡ See Table of Mortality, p. 198.

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"Bad enough indeed: but did not the fault lie in the contractors?" Yes, my Lord, there was but too much fault in the contractors, but it was not the less the fault of those who contracted with them, and of the system under which they contracted. It was the fault of ——— and his man of economy, by a double title; for having fixed upon so incurably bad a system (sacrificing to it the so much better system they found ordained by parliament with the assistance of the twelve judges,) and for having rendered the management so much worse than even under that bad system, it need to have been made.

First cause of the mischief—*length of the voyage:* the effect of the unexampled distance of the spot—of the spot chosen to be colonized, and to be thus colonized.

Second cause of the mischief—*want of interest* on the part of those on whose power depended the prevention of it—the profit which the transporter had it in his power to make by putting people to death—whether by starving them or crowding them—this profit in both cases being left to be reaped with impunity, and unbalanced by any profit to be got by keeping them alive:—want of that care which might and ought to have been taken, to do what in that case it would have been so easy to do—to bring the two antagonizing forces—*duty*, and that sort of *narrow interest* which acts in opposition to duty, into coincidence.

These causes were, both of them, peculiar to this *new* transportation system: they had not, either of them, any place in the *old*. While the territory, to which the transportation was allowed to be made, was comprised within the limits of what was then British America, the length of the voyage was scarce the third or fourth part of what it is in the case of New South Wales. Thus it stood in point of *distance*. The transportation was performed under the care of those, who, in the case of each individual under their charge, not only had nothing to gain by his death, but had everything to lose by it. The animal was a saleable commodity, the carcase not. The sale was not only *a* source of profit, but the *only* source. Thus it stood in point of *interest*.

Turn now, my Lord, to the penitentary system. Under both editions of it, voyage none. Under the original system, the managers no gainers by the death of any mortal under their management: under the improved edition of it, the manager a great loser by every one—a hundred pounds in hard money, besides other losses not susceptible of a precise and concise estimate, but which would in many instances rise to a still superior amount.

This stipulation, to the want of which, more clearly than to any other cause, may be referred the loss of so many lives as were lost in the passage to New South Wales, was not only contrived by me for my contract, and inserted by me, but maintained by me against a strong reluctance to the contrary: and after all, it was rather to the influence of will over will, of humble importunity over despotic carelessness, than to any influence of reason on such faculties as I had to deal with, that I could find any ground for attributing my success:—if success it can be termed, to receive a plighted faith, with a clandestinely promised and carefully concealed determination to break it at the bottom of it.

What the cause of this reluctance was, I do not pretend to know: whether the wish was, that the wretches should die to save charges and lighten the budget, or that the influence of profit and loss over the human breast had not been able to demonstrate itself to gentlemen even in that situation, and after so many examples of it as the voyages to New South Wales had even then been already forcing upon their eyes. The idea of establishing this coincidence, and in some such way as that proposed in the case of the penitentiary establishment, has, since that time, (if my recollection does not deceive me) conquered in some other instances the predilection for accustomed abuse, in preference to unaccustomed remedy, and forced its way into legislation or administration, I forget which. But the case is not worth hunting for: it would be found (I believe) either in the convict transportation trade, or in the slave trade, or both.*

* Since the writing of the paragraph in the text, upon turning to Bryan Edwards' History of the West Indies (vol. ii. book 4, ch. 4,) I find the following information on this head. So long ago as the year 1788, in the act 28 G. III. c. 54, use had been made of the principle of *reward*, for cementing the connexion between interest and duty, in the case of the ship surgeons, thereby required to be retained, on board the several ships concerned in the negro import trade. This might be a year or two before the time when, upon drawing up my penitentiary establishment proposal, the article in question had first occurred to me. In this legislative provision it is the principle of *reward*, reward alone as contradistinguished to *punishment*, that is applied. But it is the property of the principle of *life-insurance*, as employed in that proposal, to apply, and by the same movement, both springs of human action, *reward* and *punishment*, together: reward in the event of a degree of success, and thence as it may be presumed of care and exertion, beyond what is looked upon as the ordinary mark;—punishment in case of no higher a degree of those desirable results, than what is considered as falling short, by a certain amount, of that ordinary mark. The idea of employing the principle of reward in this way—the principle of reward singly—in the preservation of human life was thus, though a recent one, a principle already fixed in legislative practice, at the time when the idea of this principle of double action thus occurred to me—which double principle, even in this its double

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In the account of *death*, I have mentioned as yet but one of the efficient causes of this species of security, viz. *duress* on ship-board. On their arrival at this land of cruel promise,

form, has so little of novelty in it, that it is in fact no more than the old established practice of *life-insurance*, applied to the preservation of the thing itself, which is the subject of the insurance. The practice of life insurance was in itself of comparatively very ancient date; but in the form in which it is thus familiar, it has no influence on practice, no influence on the duration of the life which is the subject of it. The life is in the hands of the owner, and depends not in any respect upon the conduct of the other party—on the conduct of the person who receives the actual premium, on condition of subjecting himself eventually to the payment of the contingent retribution. It is only in particular cases, that the life of one man is lodged in the power of another, in any such way as to be capable of being abridged, not only by positive deliberate design, but by mere negligence; and that in circumstances which render the application of punishment by judicial means impossible. Of these cases, the case of the gaoler presents itself as the most extensive and prominent case. To this case the other cases in question may be reduced. A ship employed in the transportation of convicts is a floating jail, employed for the confinement and conveyance of criminals under the law of the state: a ship employed in the slave-trade is a floating jail employed for the confinement of innocent men under the law of the strongest.

It appears, therefore, that in the contrivance of this article, I had proceeded one step indeed, but no more than one step, and that a step already indicated, and by no means obscurely, to any scrutinizing eye, by the closeness of its analogy to the first. *Reward* is a principle you get a man to subject himself to the action of, without difficulty: punishment, which, even when composed of no stronger materials than those very ones which constitute the matter of reward, is so much the stronger principle of action—punishment, you may in this shape get him to submit also to the action of, upon terms.

This accordingly is what is done, by the principle of life-assurance, applied as above, to the relation subsisting between the keeper of a place of confinement and his prisoners.

Under the influence of even the weaker half of the double principle—under the influence of reward alone, introduced as above, into the slave-trade, it may not be amiss to observe what effects, in practice, had already been the result:—say in July 1793, when the penitentiary proposal, after two or three years of neglect, was unfortunate enough to obtain the acceptance of Mr. Pitt.

Before the slave-trade regulations spoken of, "a ship of 240 tons would frequently be crowded" (according to Edwards)* "with no less than 520 slaves; which was not allowing 10 inches of room to each individual. The consequence was, often times a loss of 15 per cent. in the voyage, and 4½ per cent. more in the harbours of the West Indies, previous to the sale, from diseases contracted at sea." After, and doubtless by virtue of, those regulations—with their consequent comforts, prescribed breathing space and professional care taken together—the separate efficacy of each being undistinguishable—after these regulations made in 1788, and yet before June 1793 (this being the date that stands in the dedication prefixed to the first editions of Edwards' book,) the 15 per cent. loss on the voyage was sunk already to an average of 7 per cent.; an apparent average which, for the reasons he gives, ought scarcely to be taken for more than perhaps half that rate. This at sea, and the 4½ per cent. loss in harbour, was reduced at the same time to so small a fraction, as three fourths per cent.

The experiment has instruction in it:—instruction derivable from it in more points of view than one. The difference between loss and loss shows the influence that may be exercised over human action, by a due application of the principles of *moral dynamics*—by a right management of the springs of action in human nature. The amount of the original customary loss—this amount compared with the causes that produced it, may serve to show how insufficient is the utmost check which the principle of sympathy, supported by whatever assistance it may happen to receive from all other principles of the *social* stamp—religion for instance, and regard for character, put together—is capable of opposing to the influence of the *self-regarding* principle of pecuniary interest, even where human life—where human lives even in multitudes are at stake. It may at the same time serve to obviate the imputation of passion or propensity to personal satire, if on any occasion a suspicion should be seen to suggest itself, that, in this or that instance, the fate of convicts may have been regarded with indifference, by men hardened possibly in some instances by personal character, naturally more or less in all instances by official situation. The views thus given are not among the most flattering ones; but the statesman, who should on that account shut his eyes against them, would be as little fit for his business as the surgeon was, whose tenderness would not suffer him to observe the course he was taking with his knife.

But to return. The principle on which these regulations were grounded (I mean in particular so much of it as concerns the rewards) had, all this time, not only been introduced into the statute book—introduced by that means within the pale of that consecrated ground, to which even the jealousy of office cannot refuse the name of *practice*—but had been agitated, and (one may almost say) beat into every head, in and about the treasury, at both ears, by those discussions about the slave-trade, that year after year had been occupying and agitating both houses of parliament: and the act itself by which this principle was first introduced, has since been, year after year, amended and enforced by statute after statute. Of this so much agitated—this so universally accepted principle—accepted at least in its application to the conveyance of the unhappy subjects of the black trade—what use, what application, was made in the adjustment of the *contracts* for the conveyance of white men, native Britons, to New South Wales, the contracts themselves, the contracts alone, were they for this purpose to be called for by parliament, would serve to show. It would then be seen—supposing the deficiency, if any, in point of care, to be the result, not of financical design, but of honest negligence—it would then be seen, whether the difference between a white skin and a black one were, or were not, an interval too wide, for such powers of abstraction as the treasury at that time afforded to measure and embrace.

* 2 Edwards, p. 121.

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the fugitives from pestilence were received by famine. Those who had escaped the first decimation, were now to go through a second. In one year (1792,) out of fewer than 4000 convicts, 436 breathed their last, of whom more than 400 were carried off by famine. I say by *famine*, for such was the degree of natural salubrity in the spot (a degree so prodigiously superior to any thing which antecedent experience could have promised,) that in 1794, out of a greater number there died but forty two, and in 1795, but twenty.*

At the end of the year 1792, the destroying angel having been at work in this way for three years, out of the whole number shipped off within that time, more than one fourth, by sea and land together, had died: out of 4792, viz. 1291.

In this combination of associated scourges (both of them in no small degree the product of official management) one circumstance requires to be observed. Of the mortality on both elements, that part which took place at sea, deplorable as it was in itself, operated in effect in diminution of the whole. The 522 who by pestilence or famine perished in the voyage — these enviable, because earlier victims — these superfluous wretches, had they landed, would probably, and by a number still greater than themselves, have increased the multitude of those subsequent victims, whom, by an undisputed title, famine called her own. From the amount of the

* Medium of the two years, 33. This, taken from the whole number of deaths in 1792, 436, leaves, for the number of deaths by famine in that same year, 403.

TABLE OF CONVICT MORTALITY:

Abstracted from Collins' Account of New South Wales: exhibiting (so far as is there noted) the Deaths that took place on the Voyage and in the Settlement, from 13th May 1787, to 30th of April 1795, Casualties excepted.

		1. On the Voyage.			2. In the Settlement — Died.				
Year.	Page.	Shipped.	Died.	Landed.	Page.	Males.	Females.	Total.	Children.
1787	50	756	33	723					
1788					50	28	13	41	9
1789[a]									
1790	114, 122	1222	278	944	145	123	7	130	10
1791	167, 171, 174, 175, 178, 179, 181	2063[b]	200[c]	1863	194	155	8	163	5
1792	201, 236, 245	751	10[d]	741 ?	258	418	18	436	29
1793	261, 304, 311	321	1[e]	320	332	78	26	104	29
1794	393	83 ?	?	83	403	32	10	42	10
1795					446	13	7	20	1
	Totals	5196	522	4674	Totals	847	89	936	
					Add, died in the Voyage			522	
					Grand Total			1458	

To separate what may be considered as the *extraordinary*, from what may be considered as the *natural* rate of mortality, proceed as follows: —

1. Instead of being landed year after year, as per Table, suppose the whole number of convicts actually shipped in the nine years had been landed the first year.

2. Suppose the number of *natural* deaths to have been the same for each of these nine years as for the medium of the last two, viz. 33.

3. Multiplying, then, this medium number, 33, by the number of years, 9, you get for the total number of *natural* deaths in the nine years, ... 297

4. From the actual *total* number of deaths, natural and extraordinary, in the nine years, viz. 1458
Deduct the *natural* number of deaths, as above, ... 297

5. Remains for the number of extraordinary deaths, ... 1161
which, within six or seven, is the exact medium between 1-5th and 1-4th of the number shipped. But the real proportion (it may have been observed) must, on several accounts, have probably been above this mark.

[a] No account for this year is to be found, either in Captain Collins' Account of New South Wales, or in the accounts respectively given of the same colony by Governors Philip and Hunter, and Mr. Surgeon White.

[b] And upwards. [c] And upwards.

[d] In one ship out of three: of the others nothing said.

[e] In one ship out of three: none in either of the two others.

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least ration necessary to health, take away a certain portion, only a part may die: aggravate the deficiency by a small fraction more, the same fate may involve the whole. The 522 and upwards who perished at sea, may, by having been thus destroyed in time, have saved more than 521 from being destroyed by famine, in addition to the 639, or thereabouts, who actually received their quietus from that scourge.

"But," says somebody, and not unplausibly, "to what good purpose seek, at this time of day, to rip up these old sores? In respect of life and death, the establishment presents two features: mortality at the outset; health and vitality afterwards: the mortality an infliction common to all new colonies: the vitality, a blessing in a degree altogether peculiar to this of New South Wales. The bad is past, and without remedy: for the future, (you yourself cannot but allow) the prospect is, on this side at least, a fair one."

Yes, my Lord, in the colony itself, men being once landed there—in the several spots at present settled, and, so far as concerns ordinary disease—the healthiness of the climate, and that in a more than ordinary degree, does indeed appear sufficiently established. But should the existence of the settlement, (which God forbid on so many other accounts,) be protracted for a period of considerable length—suppose double the length of that which has already elapsed—it will then be seen whether the increase of vitality gained by exemption from ordinary disease, be not dearly paid for by a decrease produced in the same period by the operation of the scourge of *famine*. Further on, as the facts rise to view, I may have occasion to sketch out the very particular nature of this danger, and to submit to your Lordship, whether it be not inextricably interwoven with the unchangeable circumstances of the spot.

The *pestilence* too—the preliminary pestilence during the voyage—will be found, and in a very high degree, not a mere accidental and occasional concomitant, but an essential and irremoveable one: for irremoveable it must be in no inconsiderable degree, if it be really what it appears to be, the joint result of the character of the passengers and the duration of the voyage. Leave them unconfined, they mutiny; confine them, they die. Negligence, above or below, may have augmented, as it does indeed appear to have augmented, the amount of the mortality from this source: care in both places may lessen it; but in such circumstances, mortality, and that in a most deplorable degree, is an affliction that, on any right consideration of the nature of the case, can scarcely but be expected ever and anon to take place, spite of the utmost care. Accordingly, as we are informed by Mr. Collins (ii. 222) in the Hillsborough, a ship that arrived in New South Wales with convicts in July 1799, the deaths were, out of 300, no fewer than 101, not to speak of sickness; although, according to the conception of the same ever candid reporter, "it was impossible that any ship could have been better fitted by government for the accommodation of prisoners during such a voyage." "The gaol-fever lurking in their clothing," is the cause to which he attributes this mortality, amounting to upwards of a third. "The terms of the charter party" he understands to have been "strictly complied with."

IV. Fourth object or end in view, *Compensation, or Satisfaction:* the means of it to be extracted, if possible, out of the punishment, and made over to the party specially injured (where there is one) in satisfaction for whatever loss or other suffering had been brought upon him by the offence.

In speaking of this as among the ends of punishment, I find myself driven, against my wishes, upon a distinction which, as often as it presents itself, can never be other than an unpleasing one: I mean the distinction between what *exists*, and what on the score of public good it were to be *wished* did exist, in point of law. That, in the case of *transportable* offences—of offences of the rank of those to which that species of punishment has been annexed—no such result is among the objects of our system of penal law, unless by accident, is but too indisputable: whether it were not desirable that it should be, may be left to every understanding, as well as to every heart, in which the study of law has not extinguished the sense of justice.

Observe, my Lord, the incongruity, the inconsistency. Where the offence is deemed least enormous, the party injured has his chance of satisfaction for the injury: where it is deemed most enormous, and punished accordingly, he has no such chance. Not that anything can be more satisfactory to anybody than this arrangement is to Blackstone.* As often as a man is hanged or transported, or kept in a jail or flogged, satisfaction is thereby given to somebody or to something:

* He observes, and with great truth (B. iv. ch. 1,) that if the Crown takes everything, there remains nothing for anybody else. "As the public crime (says he) is not otherwise avenged than by forfeiture of life and property, it is impossible *afterwards* to make any reparation for the private wrong." But is it necessary or right, that while damage remains without reparation—injury without redress—the King, who has sustained no damage—that is, A or B in the name of the King—should take everything—should sweep away the whole of that fund from which reparation might have been afforded? The affirmative was found as easy to assume, as it would have been difficult to prove.

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this being assumed, what sort of a thing the satisfaction is, or who gets it, is, in the learned commentator's account, not worth thinking about.*

To your Lordship's most humble servant, since he conceived himself to understand what *satisfaction* meant, nothing but dissatisfaction (he will confess) has ever been afforded by the arrangements thus made with reference to it; and with these feelings, some sixteen or eighteen years ago, he set to work, and travelled through divers investigations in relation to the subject. *Cases*, by injury or otherwise, calling for satisfaction, with the reasons for affording it—*party to whom*—*party at whose expense*—it shall be afforded—*quantity* and *certainty* of satisfaction—different *species* or *modes* of satisfaction, adapted to the nature of the several *injuries*. Such were among the subjects of those labours, the produce of which, lately rescued from the spiders by a friend, should be laid at your Lordship's feet, could time be spared for any such trifles from your Lordship's sublimer occupations.

Nine or ten years ago, in drawing up the proposal for my penitentiary establishment, a thought struck me, that on paying the whole expense of the experiment, I might perhaps be allowed to purchase the satisfaction of stealing the idea into practice. Amidst the blindness and negligence, the marks of which appeared but too conspicuous, my hope was, that, under favour of that vulgar and almost universal jealousy, that would rather lose a ten-fold public benefit than not nibble down to the quick the recompense to the individual who should give birth to it, a plot even for doing good might pass undetected. I had, however, miscalculated: gentlemen were too sharp for me: what was wanting in discernment, had been supplied by prejudice. When the proposal came to be turned into a contract, the battles I had to fight would be here an episode, upon what I fear has already been accused of being itself an episode. Careful of my interests, as I myself was negligent—seeing deeper into them by a glance than I had been able to do by the calculations and meditations of months or years, gentlemen trembled lest I should ruin myself.

To let your Lordship into a secret, the danger of *loss* was as nothing: *diminution of gain* was all the sacrifice. What I bound myself to do in this way, was limited by considerations of necessary prudence: my *hopes*, and, as far as means should extend, my *intentions*, were to do more. Your Lordship is now master of my secret; which, to complete the confession, has never been such to anybody that would allow me to hope he might be prevailed upon to listen to it.

To return to the question. In New South Wales, the annual value of a man's labour being *minus* £46: 5s. or some such matter, the surplus applicable to the purpose of compensation could not be great: I mean, the positive surplus, extractable from that negative quantity, for the purpose of being converted into the matter of positive compensation, payable to the individual in Great Britain who had been a sufferer by the offence for which the convict in question had been consigned to New South Wales.

I hear your Lordship stopping me. "The idea of compensation being, in such a case, so novel—novel to a degree which you yourself, sir, have even been forward to acknowledge—the absence of it cannot, consistently with justice, be objected as a blemish to that system of punishment, of which the scene was laid in New South Wales." Be it so, my Lord: but the task in hand is—a parallel to be drawn between this *exotic* system and the *home* system, which has been set aside by it: and the mode of trial chosen by me, not knowing of a better, was, by their respective degrees of conformity to the several *objects* or *ends* of penal justice: and, at the very outset, in speaking of those ends, I assumed the liberty (I hope not altogether an unreasonable one) of adding to those actually and habitually aimed at, such others, if any, in regard to which it might appear reasonable and *desirable* that they *should* be aimed at. But, in regard to this of *compensation*, as far as my opportunities of observation have extended, and from all I have been able to collect from offices of insurance, courts of justice, and other places, it has appeared to me that, when a loss has been suffered, the receiving back again the amount of it, or so much towards it as may be to be had, is an event pretty generally looked upon as a *desirable* one; I mean, in the eyes of him by whom the loss has been sustained: nor, saving Blackstone, and those who think with Blackstone, has it ever happened to me to meet with any person, to whom it has presented itself in the opposite point of view, unless those be excepted, at whose expense and to whose loss the matter of compensation was to be found; a class of persons whose repugnance would not, I believe, on the present occasion, be regarded as an insuperable obstacle, forasmuch as, by the supposition, it is intended they should undergo punishment—and a degree of punishment, of which the mortification from such loss would be but a part.

If, then, it may be assumed that *compensation* presents a legitimate title to a place

* "We seldom hear any mention made of satisfaction to the individual," says he:—"the satisfaction to the community" (viz. by the destruction of one of its members) "being so very great; and indeed as the public crime," &c. continues he, giving the reason he is so well satisfied with as above.

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among the ends of penal justice, it appears further to my humble conception, that supposing, with the favourite system of *exotic* punishment in one scale, and the discarded system of *home* punishment in the other, the balance were to be found to hang exactly even (the weights from the four other topics, *example*, *reformation*, *incapacitation* for fresh offences, and *economy*, being collected and thrown in on both sides) that on *that* supposition, I say—and *that* I hope, not a very presumptuous one—a few grains of compensation might (forasmuch as there could be nothing of the sort in the opposite scale) be found peradventure to preponderate.

This is all I presume to contend for under this head: and here ends all the trouble I wish to give your Lordship, for the present at least, on the subject of this unfashionable and little regarded end of penal justice.

V. Fifth head of comparison between the two systems: fifth and last object or end proper to be kept in view in a system of penal legislation: the collateral object of *Economy*: economy in respect of the aggregate expense of the establishments allotted to this purpose.

In the 28th Report of the Committee on Finance, your Lordship possesses a document in which this topic stands discussed, with that comprehensive and demonstrative accuracy in which the advocates of the penal colonization system have never ceased to behold their sentence. I beg your Lordship's pardon: instead of *advocates*, I should rather have said *supporters*; for, to be an *advocate* of a system, a man must have something to say for it, which in the case of a *supporter* is not necessary. In the present instance, in the character of advocates, I have always found gentlemen as silent and modest as in the character of supporters they have been found powerful—and by dint of power firm and strenuous. In the epithet, the so often quoted epithet, "*improved*," consists (as your Lordship will find) not only the substance, but the entire tenor of their argument: and on what sort of foundation that epithet has been applied is a point on which, by this time, your Lordship is not altogether unprepared to judge. Including, as it does, the whole budget of their arguments, for all occasions, on which the merits of the favourite establishment can come in question, it would be injustice to refuse them, on any occasion, the full benefit of it.

According to the calculations in the above Finance Report—in New South Wales, the average annual expense of convicts, per head, varying according to a variety of statements and suppositions, is from £33 : 9 : 5½ to £46 : 7 : 9¼; the highest rate of expense the most probable.

Annual expense per head of convicts maintained on the intended penitentiary plan, exclusive of expense of building and outfitting once paid, as per draught of contract,*	£12	0	0
Expense of building and outfitting for the intended number of a thousand, as per ditto, £19,000—say for round numbers £20,000: this at five per cent. makes to be added per head per annum, .	1	0	0
Expense of land for the building, had the spot at Battersea Rise been taken, that had been appropriated to the penitentiary establishment by a jury under the act of 1779, £6,600:†, or if an allowance had been made for intervening rise of value, say £10,000: this at five per cent. makes to be further added per cent. per annum, ...	0	10	0
Total expense per annum,	£13	10	0

Say, accordingly, rate of expense of the colonial establishment to the penitentiary establishment—in round numbers, from somewhat more than two to one, to somewhat less than four to one.

True it is, that in the course of the seven or eight years, during which the pretence for relinquishment on the ground of *lapse of time*, had been manufacturing, the expense of necessaries had received such an increase, that, without some such addition as between £4 and £5, the faith plighted by the acceptance of the proposal in 1793, must (as your Lordship may have observed from my *armed*,‡ and therefore suppressed memorial of April 1800,) have been violated in substance. True it is also, that by the compliment paid to —— in the change of the spot from Battersea Rise (the spot chosen by the twelve judges, &c., and valued by a jury under the act of 1779,) to Tothill-fields, an additional expense would have been incurred: an expense, the amount of which, though not capable of exact liquidation, might, supposing the lot had been completed, be set down in round numbers at another £10,000: so that, upon the whole, the expense per head per annum of the pe-

* 28th Finance Report, p. 71.

† 34th Geo. III. c. 84, § 1.

‡ *Armed.* i. e. with reasons: *suppressed*, because the reasons were found troublesome. The distinction is one which it was necessary to note; because, in the unarmed memorial, cut out to pattern, as per order, and delivered in instead of the other, no such troublesome reasons might be to be found. The armed one is, moreover, the one which, notwithstanding all suppressions, has been in your Lordship's hands these six months. The harmless one lies very quietly upon the Treasury shelves. The distinction, by no means an uninstructive one, will be explained in the course of the *narrative* by a variety of examples.

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nitentiary system, on the supposition of the thousand prisoners, would have been to be raised from about £13 : 10s. to about £18, 10s. But the difference, amounting to about £5 a-year per convict, belongs plainly to no such account as that of the original and proper expense of the penitentiary system: it may be set down to the account of public money wasted — wasted between ——— and ——— by the one of these ——— and incorruptible members of ———, in spite of the most strenuous remonstrances on my part, out of compliment to, and for the accommodation of the other.

"But the expense," says somebody, "will decrease: it was expected to be great, till the colony raised its own provisions; but now that period is arrived."

My Lord, if it were put to me to say, honestly and sincerely, whether the expense per head were most likely to increase or to decrease (reckoning from the last amount as stated in the report of the committee of finance), I should certainly answer — to decrease, and that in a considerable degree: though at the sametime, were I to be asked whether any considerable decrease would be to be *depended* upon, I could not answer otherwise than in the negative.

On the other side of the question, there are two other points, to which I could venture to speak with much greater confidence.

One is, that the rate of possible decrease has its limits; and those limits such, that there is not any the smallest chance whatever, that within the compass of the present century the rate of expense per head in New South Wales will be reduced to a level with the rate at which, if the public faith had been kept with me at the outset, it would have stood under the penitentiary system. I might perhaps add — nor even to a level with that at which it would now stand, if so much of the public faith, as at this time can be kept with me, were now kept.

Another is — that, long before the rate of expense per head, in New South Wales, is reduced so much as to the level of what it would *now* be under the penitentiary system, this latter expense would be reduced to nothing at all.

In relation to the first of these two points — the probable amount of the decrease in the case of the New South Wales system — if our expectations are governed by those which, according to the latest documents, were entertained by the conductors and supporters of it, *they* at least cannot complain much of the estimate.

Of the expense of the ten or eleven first years of the existence of this settlement, being the period comprised in the account signed *Charles Long*, 16th May 1798, and marked O in the 28th Finance Report, printed 26th June 1798, the grand total, at that time brought to account, amounted to £1,037,000. This total is compounded of seven divisions. One of them is intituled, "Expense of victualling the convicts and the settlement from home." To this division a note is subjoined, expressive of the expectations of the conductors and supporters of this system, in relation to the reduction of the expense. "It is supposed," says the note, "this expense, compared with the numbers victualled, will gradually decrease."

It is to this division (your Lordship will have the goodness to observe) — it is to this division that the expectations thus declared confine themselves: of no other of the seven divisions is any such expectation so much as hinted.

The sum expressive of the expense under this head is	£186,270
Lest anything should be omitted, that can possibly help to swell the amount of the only head upon which any expectation of reduction is so much as professed to be entertained, let it be observed, that (according to another statement in this same account) had the plan of accounting, pursued on and from the fourth year, been pursued during the three first, this division would have received an addition, at the expense of the last preceding one, intituled, "*First establishment of settlement and transportation of convicts:*" the total of which, for the ten or eleven years, is . . .	264,433
Say, then, instead of £186,270— and for round numbers, . .	200,000
From the grand total, amounting to	1,037,230
Strike off, for the same reasons, the odd	37,230
Remains	1,000,000

which gives, for the proportion of that one of the seven divisions on which alone any saving was so much as expected, one *fifth* part of the whole. The saving expected (your Lordship will be pleased to observe) was not the saving *of*, but only a saving *upon*, that branch of the expense: not a saving of the whole, but only a saving of some unspecified and unspecifiable part of it. Let us be more liberal, however, to honourable and right honourable gentlemen, than they would venture to be even to themselves. Call it a saving of the whole. On the other hand, let us take, for the probable continued amount of the expense per head, setting aside the deduction, the then actual amount, as found by the committee, ... £46 7 0¼

From the amount so found, let us, for the sake of round numbers, strike off the odd . .	0 2 0¼
Remains	£46 5 0

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Brought forward, .	£46	5	0
From this sum deduct the supposed saving, amounting to .	9	5	0
Remains	£37	0	0

In this £37, then, your Lordship sees that quantity *towards* which, according to the expectation of gentlemen who are urged by every imaginable motive to put the best face possible upon their "improved" colony, may be considered as likely to be making approaches, from time to time, but *to* which, even according to expectations so circumstanced, it can never be considered as susceptible, in the nature of the case, of ever being reduced.

But in this £37 your Lordship sees a rate of expense the exact double of that of the penitentiary establishment, taken at its latest and artificially augmented nominal amount, £18, 10s.

Being the amount to which gentlemen themselves had (as already mentioned) contrived to swell it from the	£13	0	0

Which was the original and proper rate.*

Here, then, as in a nut-shell, your Lordship may see the *morality*, the *economy*, and the *logic* of right honourable gentlemen — all in their genuine colours.

For seven years together, by a course of management which I may have occasion to exhibit elsewhere, they were manufacturing their "lapse of time;" and thus was formed *one* of their four grounds for the relinquishment of the incommodious measure.

In a still longer space of time (adding preceding delays) they manufactured a necessary "increase of terms;" and this was *another* of their four grounds: and, in these two harmonizing features, your Lordship beholds the *morality* of honourable and right honourable gentlemen delineated to the life.

* In addition to this £46 : 5s., or this £37, the whole produce and value of the whole labour extracted or extractable from the convicts (while in their state of bondage at least) may be considered as so much thrown away: or, if not considered as thrown away, then, whatever may be the value of it ought at any rate to be added to the account of expense, since that account is lessened and reduced to those sums respectively by the amount of it. On the panopticon plan, one fourth part of the produce of each man's labour would, without any additional expense to government, have been employed—partly in insuring to him a maintenance in his declining years, partly in administering present comforts to himself and family, where he has one: the other three fourths would have been employed—partly in furnishing the capital necessary for the setting to work such convicts as should choose to betake themselves to the establishment for employment, after the expiration of their respective terms; (a good deal of it in the charges of buildings, and other masses of fixed and other capital)—partly in affording subsistence and recompense to the various descriptions of persons employed in the way of management and superintendence.

Under the head of *Incapacitation* (viz. for fresh offences), I have had occasion to point out the advantages reaped in that way from the tranquillizing hand of *death*. The same active and gratuitous agent, while thus employed in the police department in cutting short the thread of life, will have been rendering proportionate service in the financial department, by a proportionable abridgment of the thread of expense.

At the time of the last account, the actual *quantum* of the expense, taken in its total, rose no higher than a million and thirty-seven thousand pounds, for the eleven or twelve years at that time elapsed: but unless gentlemen choose to take credit, as for a service done to his Majesty, for the number of his subjects thus got rid of, to this £1,037,000 should be added, upon a fair estimate, some such matter as one, two, or three hundred thousand pounds more. Bad as it is, as a measure of *police*—bad as it is as a measure of *finance*—it would in both characters have been still worse, had it not been for its efficacy in the character of a measure of *destruction*. Some men, I hope, will not, even in the secret of their own bosoms — no man, I trust, will openly, and in the face of day, be bold enough to set down this destruction on the *profit* side of the account. Not that even this flagitious profit, if it were one, could be justly placed to the account of this new invented transportation system: since, by setting or leaving men to rot in gaols at home, the same, or any still more *preventative* and more *economical* degree of destruction might be effected at a small part of the expense.

Notwithstanding this increase in the total *quantum*, the *rate* of expense per head (it may be observed on the other hand) would in this case have been diminished: since those divisions of the expense, which are fixed, and apply in common to the whole number of persons maintained — such as the expenses of the several official establishments—civil, military, and naval—those heads of expense having, by the supposition, a greater number of heads of persons to distribute themselves upon; would fall, in so much the less magnitude, upon each. The truth of this observation must, to a certain extent, be admitted: some heads of expense there are, to which the survivance of the human beings, who perished, would not have added any increase. The expense of *transportation* is an example: but in what degree — or indeed whether in any degree — the expense of the several superintending establishments above mentioned, can with propriety be considered, as being in the same case, will be matter of great doubt. Throughout, the scantiness, or supposed scantiness, of these several establishments, appears to have been matter of general complaint: this complaint, well or ill-grounded, has been among the few complaints which appear to have met with adequate attention here at home, and a very considerable increase in the total of those establishments has been the consequence. Thus stands the matter, notwithstanding the reduction effected in the population, by the causes of destruction above mentioned: can it reasonably be assumed, that, if the population had been in any considerable degree greater, the establishments for the management of it would not in the same degree have been increased?

This topic is mentioned only, (as Necker would say) *prò memoriâ*: to form a precise calculation, would require a mass of labour and paper disproportionate to the present purpose.

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The genuine expense of the discarded system was as . .	£13	10	0
The expense to which they had contrived to swell it, for the purpose of blasting it, was as .	18	10	0
Instead of it, and in the character of a declared ground for discarding it, though there be no incompatibility, they keep up the favourite system, the expense of which, by the latest accounts, was as	46	5	0
And which they themselves could not pretend to say was likely ever to be reduced so low as .	37	0	0

And here your Lordship has another sample, of that congenial cast of *economy*, for which the public is indebted to the contrivers of the never-to-be-forgotten *Poor Bill*.

It is to save the public from being burthened by that "increase of terms," to which, not altogether without reason, they apply the attribute "*great*"—to save his Majesty's subjects from paying £18 : 10s. that they saddle the present generation with £46 : 5s.—leaving to some future generation its chance for seeing the expense reduced to a sum between that and the £37.

And here, in conclusion, your Lordship sees a sample of that *logic* which has led to such *economy*, and proved such *morality* to be conducive to true interest, and compatible with lasting fame.

Your Lordship (I hope) has not forgotten, that, in relation to every one of those points which either have been, or ought to have been its *direct* objects — *example* — *reformation* — *incapacitation* in regard to ulterior offences— *compensation* for the mischief by past offences — the establishment has been (according to the nature of each object) as completely unconducive, or as strenuously repugnant, as it is possible for an institution to be: and it is for so pre-eminent a degree of unfitness with reference to all these its *direct* ends, that a compensation was to be looked for on the *collateral* ground of *economy*; — economy, the only ground so much as hinted at — the strong and favourite ground of right honourable gentlemen: — the only one of the five objects so often mentioned that appears ever to have had any pretensions to the honour of their notice: for, as to the confining the mischievous activity of convicts — confining it, by lawless force, to the spot from which the law, had its force been equal to that of right honourable gentlemen, would have set them free — confining it to a part of his Majesty's dominions, and thereby preventing it from displaying itself in any part except that one — as to this point, I have already had occasion to observe, that *change of place* and *annihilation* are not the same operation to an ordinary understanding, whatever they may be to extraordinary ones.

"In *arithmetic*," (says Mr. Rose most truly*) "there is no eloquence to persuade, no partiality to mislead. In its calculations, therefore," (I keep on saying with the right honourable gentlemen at my respectful distance,) "if the reader will have the patience to peruse them, plainly and fairly, as they are given in the preceding pages, he cannot be at a loss for his decision. To them the writer of these sheets," (I still keep up with him,) "can with confidence appeal. The subject," he continues and concludes, does not "admit of favour, but it cannot fail to obtain justice." There — there, alas! — he distances me. The subject — the subject in which *I* was concerned — *did* admit of *favour*, and therefore it *could not* obtain justice.

So much for the contingent decrease upon the expense of the favourite establishment. Your Lordship may now compare it with the decrease already hinted at, in the case of its devoted rival. Of this expense, the continuance being limited to that of the longest of two lives, one of them a very insignificant and useless one, was in June 1798, in a valuation printed in the 28th report of the finance committee, estimated at from about 12¼ to about 13¾ years;† and, in the course of the four years and more, which gentlemen have since contrived to make elapse, those two lives (it will be comprehended without much difficulty) have not, under the care thus taken of them, increased much in value.

Thus much, on the supposition of a *reduction* under one of the seven heads of expense. Against this will be to be set the contingency of an *increase*, under two other of these heads: a contingency which does not present itself as altogether an improbable one: I mean those of the *military* and *naval* establishments; to say nothing of the *civil*, which is so much inferior to the least of them.‡

* On the Civil List 1802, p. 39.

† Appendix H. p. 81.

‡ Comparative State of the three Establishments, Civil, Military, and Naval, in different years, as per 28th Report of the Committee of Finance, p. 25, and Appendix O to do. p. 121.

	1789.	1797.
Civil, App. O. p. 121, . .	£2,877 10 0	£5,523 10 0
Military App. O. p. 121, .	6,847 1 10	16,906 4 2¼
	£9,724 11 10	£22,429 14 2¼
Naval, p. 25, ...	a 10,010 0 0	a 10,010 0 0
		£32,439 14 2¼

a Average of the whole eleven or twelve years: the separate amount of the respective years being, in the case of the naval establishment, unascertainable.

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Your Lordship has not failed to notice in its place the lady's letter. The initial and principal part of it brings upon the carpet this same topic (and sure enough, my Lord, it is not from that source alone that your Lordship has heard of it,) the two sorts of things at present needful to the "improved" colony —more vessels and more troops. The passage is in these words:—

"*Port Jackson, 7th October* 1800.

"H. M. Ship Buffalo, returning to Europe, gives me an opportunity of writing to you, and of mentioning the uncomfortable state of anxiety we are kept in by the late importation of United Irishmen. For these last six months we have been under some apprehensions: but ——, disbelieving their intentions, —— took no steps to prevent their designs, until last Sunday week, which was the day fixed for the destruction of the military and principal families at Paramatta; a considerable settlement fifteen miles from this. The alarm being general, prevented their meeting: but above thirty of the ringleaders were apprehended and examined, when the greatest part confessed the horrid plot. Most of the passengers in the Buffalo treat this business as ridiculous: but this is probably because they are not likely now to partake of our danger, or from their not knowing the dreadful enormities already committed by these people in their own country. Our military force is very little in comparison of the numbers of Irish now in the colony, and that little much divided: the Buffalo's sailing leaves us without any naval protection whatever. Much trouble may befal us before any succours can arrive, even after our critical situation is known; and we have every reason to believe that other ships, with the same description of people, are now on their voyage to this place."

That these apprehensions, though expressed by a female pen, were neither unfounded nor exaggerated, appears pretty well established by posterior accounts. For these, indeed, I have no other warrant than that of the newspapers from which they are copied. All the knowledge I have of them is of the negative kind, viz. that I know nothing whatever, either of the authors of the respective articles of intelligence, or of the manner in which they found their way to the respective prints. But even this negative knowledge is not altogether without its use and application, since the result of it is, that the contents cannot have received any undue tincture from any motives by which the present representation may be supposed to have been tinged.*

"But New South Wales," (it may still be said,) "New South Wales, besides being an

* *Porcupine, 10th June* 1801.—"A letter from Botany Bay, dated the 7th October, contains the following intelligence:—'A very unpleasant circumstance had like to have occurred here lately. The Irish rebels, who were lately transported into this country, have imported with them their dangerous principles, rather increased than subdued by their removal from their native country. They began by circulating their doctrine among the convicts, and a conspiracy had scarcely been formed before it was happily discovered. They had conducted their scheme with great art and secresy, to which they were generally sworn, and offensive weapons were made, even from the tools of agriculture, for carrying their purpose into execution. In no part of the British dominions upon any occasion, could the troops and principal inhabitants show more zeal and alacrity in coming forward in support of the government.'"

Such is the account given in the above paper, of an affair which appears to have been the same as that spoken of in the lady's letter.

The account given of the same affair, in the continuation of Captain (now Lieutenant-colonel) Collins' history, is as follows, page 306:—"The Buffalo sailed for England on the 21st of October, and as the Governor had intended to touch and land at Norfolk Island, for the purpose of learning, from his own observation, something of the state of that settlement, some few of the Irish prisoners, who were suspected of laying plans of insurrection and massacre, were taken in the Buffalo, and landed there."

The prisoners in question appear to have been of the number of those who had been taken up (as the historian informs us), and examined on the suspicion of a plot of this kind, so long before as in the beginning of the preceding month. II. Collins, p. 302. Marks of falsehood (it is to be observed) appear on the face of the confessions as reported: but an interpretation that suggests itself is—that though the plot, as pretended to be confessed, was false, the object of the falsehood was to conceal a true one. That the belief of a true plot at the bottom of the whole, was generally entertained, appears by the exertions made, under the authority of the governor, to guard against the apprehended mischief, by so strong a remedy as the formation of *volunteer associations*: "two volunteer associations of fifty men each," out of such materials as "the most respectable inhabitants" in a colony so composed. The declared object was "the increasing the armed force of the colony." If in the amount of the regular force the deficiency had not, in the judgment of the governing part of the colony, been a very decided one, it may be imagined whether any such auxiliaries would, in any such number, have been called in to supply it.

Bell's Weekly Messenger, 3d January 1802. —"In consequence of a number of Irish rebels having been transported and sent to Botany Bay, and there attempting to subvert the government by various acts of disorder and tumult, that colony became in a state of insurrection; and at Norfolk Island they would have succeeded, but for the manly and spirited conduct of Governor King and Lieutenant-governor Patterson, who caused the principal ringleaders to be secured, some of whom were executed. The spirit of insurrection was in some degree revived by the arrival of the Lady Anne transport in March last, bringing with her one hundred and fifty of the vilest miscreants of all descriptions, convicted of the worst of crimes, such as murder, &c., &c.;

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establishment for the maintenance, employment, and reformation of convicts, is moreover a colony: and, as colonies in general are admitted to be valuable possessions, so must this too; since this, whatever becomes of it in any other character, remains at any rate a colony."

My Lord—to confess the truth, I never could bring myself to see any real advantage derived by the mother country, from anything that ever bore the name of a *Colony*. It does not appear to me, that any instance ever did exist, in which any expense bestowed by government in the planting or conquering of a colony was really repaid. The goods produced by the inhabitants of such new colony cannot be had by the inhabitants of the mother country, without being paid for: and from other countries, or the mother country itself, goods to equal value may, without any such additional expense, as that of founding, maintaining, and protecting a colony, be had upon the same terms.

By accident, and for a time, there may indeed be, in the rate of profit obtained in dealing with the inhabitants of the new colony, a superiority with reference to the rate of profit obtained in dealing with other inhabitants of the mother country, or with the inhabitants of other states that are at the whole expense of their own maintenance; but such superiority is either not regarded as worth thinking about, or else tacitly assumed, and at any rate, never so much as attempted to be proved: while, on the other hand, an inferiority is at least as probable.* The supposition universally entertained—the supposition all along, though tacitly, assumed—the supposition on which statesmen speak and governments act, is—that the goods of the inhabitants of the colony—the productions of the colony—are obtained for nothing;—that the capital employed in carrying on the trade with the colony would not have yielded anything—would neither have yielded the ordinary rate of profit, nor any rate of profit at all, had it been employed elsewhere—had it been employed in any other branch of productive industry. On this supposition, the whole amount of the annually imported produce of the colony, figures annually on the side of national profit, without any *per contrâ* on the other side: or rather (what is still worse, and, if it were not so universal, more flagrantly absurd,) the export, by the sacrifice of which this import is obtained, is also considered as national profit: the loss, not only not deducted from the profit, but added to it.

Thus then stands the real account of profit and loss, in respect of colonies in general:—Colonies in general yield no advantage to the mother country, because their produce is never obtained without an equivalent sacrifice, for which equal value might have been obtained elsewhere. The particular colony here in question yields no advantage to the mother country, and for a reason still more simple—because it yields no produce.

The distinction is an essential one: I trust to your Lordship's candour for the keeping it in broad day-light. The proposition relative to the unprofitableness of *colonies in general* is one thing: the proposition relative to the particular unprofitableness of this *particular colony*, is quite a different thing. The first

but by a timely check it was soon overturned. We are happy to announce, that the military force there behaved throughout with much commendable firmness and spirit; though at the same time we lament that the present force seems by no means adequate to so dangerous and arduous an undertaking."

In the newspaper, as above, the time of the occurrence is not mentioned. In Lieutenant-colonel Collins' Continuation, no further mention is made of it, than what is contained in the following short paragraph, page 333:—"At Norfolk Island, it was fortunately discovered, that, on the 14th of December 1800, a plot had been formed by some of the convicts to murder the officers, and getting possession of the island, to liberate themselves. Two of the ringleaders were immediately executed." So far the historian: another circumstance, from which it may be judged whether the alleged plot, examined into but two months before, was altogether an imaginary one.

* In a report made by the committee of his Majesty's Privy Council in 1789 (a report which, it may be presumed, did not meet with much disagreement on the part of either the first Lord or the Secretary of the Treasury)—in this report, as quoted by the late Mr. Bryan Edwards, in his History of the West Indies,[a] the value of British capital in these colonies is estimated all together at £70,000,000. At the same time, the "Mercantile value of the capital per annum," (by which, I take for granted, he means the annual value of the produce raised by the employment of that capital) is estimated at no more than £7,000,000. This according to Mr. Edwards' estimate; in which, if I understand the plan of valuation right, the rate assigned is rather higher than in that of their Lordships. Upon 70 millions, 7 millions is 10 per cent. In Mr. Pitt's and Mr. Rose's estimate, made for the purpose of the income-tax, 15 per cent. is reckoned upon as the ordinary rate of profit upon mercantile capital, employed in the home trade:[b] an estimate which, in the main, appears to be agreed to and confirmed by Dr. Beeke.[c] It would be a problem worthy the ingenuity of those right honourable gentlemen, to show us by what process "*indemnity for the past and security for the future*" are to be bestowed upon this or any other country, by engaging its capitalists to employ their capital in a branch that produces no more than 10 per cent. in preference to so many other branches that produce 15 per cent.

[a] II. Edwards, p. 381, 390, b. iv. ch. iii.

[b] Rose, Brief Examination, &c., 7th Edit. 1799, App. No. 7.

[c] On the Income Tax, 2d Edit. 1800, p. 131.

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may be consigned to the chapter of romance, by the admirers of *arithmetic and its calculations:* the other will remain as firm, as impregnable, as ever. The former gentlemen may amuse themselves with, and welcome—a good round House-of-Commons laugh will dispose of it—the other will not quite so easily be got rid off. *Ex nihilo nihil fit,* is a maxim, which, by its antiquity, may at least be protected from the reproach of *innovation.* From a colony in which no *import-worthy* produce can be raised, no import-worthy produce therein raised can be imported.

A trade, indeed, and a trade with foreign countries, has all along been carried on in New South Wales by the inhabitants of New South Wales. A trade? Yes, but of what sort?—a trade consisting of buying without selling. The articles purchased have been such of the necessaries and comforts of life, as the inhabitants, receiving pay immediately or mediately from the government of the mother country, have been willing to purchase, at the expense of the whole, or a corresponding portion of such their pay. The articles sacrificed have consisted, exclusively, of the money of which that pay has been composed: a trade which, with reference to any profit considered as receivable by the inhabitants of the mother country, consists in giving to the people of other countries for nothing, and in the shape of hard money, so much wealth raised on those same inhabitants of the mother country by taxes;—a trade which consists in paying tribute, tribute without return, to foreign countries. The people at large, on whom the money is levied, to be distributed, in the shape of pay, among the functionaries of government in New South Wales, get nothing at all for their money: the functionaries themselves get very little for it, since the goods they have purchased with it have always been sold to them at most enormous prices: prices some number of times perhaps as great, as they would have got the same articles for had they staid at home.*

Such has been the nature of the trade hitherto: and, if there be any prospect that

* II. Collins, page 202, *March* 1799.—"The settlement was at this time much in want of many necessaries of life; and when these were brought by speculators and traders, who occasionally touched there, they demanded more than 500 per cent. above what the same articles would have been sent out for from England, with every addition of freight, insurance," &c.

Ibid. page 280, 3d *January* 1800.—"Having touched at Rio de Janeiro, (the Mercury) had brought many articles for sale, as well from that port as from England, most of which were much wanted by the inhabitants: but the prices required for them were such as to drain the colony of every shilling that could be got together." To such a degree had this exhaustion been carried, that, if I apprehend the passage right, a species of paper money, and that issued by government itself, had been then already, and if so, probably continues to be, current in New South Wales. The Governor, not being supplied from government at home with money in sufficient quantity for the purchase of that proportion of the stock of public subsistence which was to be obtained by purchase from such of the inhabitants by whom it had been produced, found himself under the necessity of coining this fictitious species of money, imposing thereby, on government at home, a quantity of debt to the amount of it.

Ibid. page 263.—"The difficulties which were still placed in the way of the commissary in preparing his accounts to be sent home, through the settlers and other persons who had not come forward, as they were sometime since directed, to sign the requisite vouchers for the sums paid them for the grain or pork which they had delivered at the public stores, [these difficulties still continuing unremoved] the commissary was directed not to make immediate payment in future, but to issue the *government-notes* quarterly only, when every person concerned would be obliged to attend, and give the proper receipts for such sums as might be there paid them. This was a most useful regulation, and had been long wanted." *The* government notes: an expression which seems to imply that the issuing of such notes had then already been in habitual use.

This was in August 1799: four or five months before the time of the complaint made, as above, of the disappearance of hard money.

Down to the last moment, the supposition which the historian proceeds upon is—that whatever hard money ever finds its way into the colony in any shape, though it be but in half-pence, will (unless preventive measures, such as he suggests, be employed) find itself under a perpetual impossibility of staying there. These remedies are—such as unexperienced good sense would naturally suggest—but of the complete and radical inefficacy of which, history, and the reflections which have grounded themselves on that history, might have completely satisfied him. Though every shilling had been called half a crown, no American who received it to take with him to America, would have given so much as thirteen pence for it.

Ibid. page 271, *November* 1799.—"Information was at this time received, that copper coinage to the amount of £550 was in the Porpoise, whose arrival might be daily looked for. The circulation of this money would be attended with the most comfortable accommodation to the people in their various dealings with each other; and it might be so marked as to prevent any inducement to take it out of the colony. If it should ever be found convenient by government to order a silver coinage for the use of the settlement, if it were fixed at not more than half or two thirds of the intrinsic value of what it might pass for, so as to render the loss considerable to any one attempting to carry it away, it would be felt as a considerable advantage, and would effectually prevent the forgeries to which a paper currency was liable."

By this same passage, the existence of a paper currency, though not directly stated, appears, however, to be pretty effectually confirmed.

In addition to the other imported blessings—idle hulks and equally idle gaols—the foundation of a sort of *national debt* appears thus to be

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the nature of that trade should undergo a change in any degree or in any respect more advantageous to the mother country, it will rest with those to whom such prospect has manifested itself, to point it out.

Of real advantages, if the case afforded any, *experience*, with reflection grounded on it, might furnish out the list: for ideal ones, *opinion*, wherever it may be to be found, is the sole resource.

In a passage that has already been submitted to your Lordship's notice, the late Judge Advocate of the colony, taking upon himself the task of advocate in another sense, and calling over the muster roll of the advantages supposed to result from the establishment, gives the precedence to those, to which, had they any real existence, the precedence would unquestionably be due: I mean those which consist in its supposed subservience to the ends of penal justice: of which supposed subservience I have already had occasion to submit to your Lordship a somewhat different estimate. Of any of the advantages commonly looked for in colonies (advantages derived from population, produce, or trade,) I find no specific mention. Two other supposed advantages are, however, added, the account of which, that no injustice may unawares be done to it, is here given in the respectable author's own words. The passage has been already quoted. "Valuable nursery to our East-India possessions for *soldiers:* valuable nursery to our East India possessions for *seamen*." Nothing, indeed, of all this does the learned Advocate state it as having yet proved: but all this he supposes that one day or other "*it may prove*."*

As to *soldiers*, in as far as it lies within the bounds of physical possibility, that soldiers stationed in New South Wales may be sent from thence to the East Indies, in so far may New South Wales be considered as *capable* of serving as a nursery for soldiers, with reference to the East Indies. But, forasmuch as the nearest port in New South Wales is farther from the mother country than the farthest port in the East Indies is, farther in point of time, by a third or so of the way—and forasmuch as it is not New South Wales that is in the way to the East Indies, but the East Indies that are in the

laying, if not already laid, in the "*improved*" colony.

The particular vessel to which the exhaustion is ascribed, was (it may perhaps be observed) not a foreign but a British one. But the cause which gave birth to the first manifestation of the effect, would naturally be the cause to which, in a simple and ordinary mode of statement, the effect itself, the whole effect, without distinction of parts and degrees, would be ascribed. By the table of ship arrivals given by our historian, among eighteen vessels that, in the course of the seven or eight years, from November 1792 to February 1800, arrived in New South Wales with cargoes of goods for sale, it appears that eight were from his Majesty's dominions (Indian possessions included;) the other ten from various foreign states.

It is in deference to the more obvious, and what, I believe, are the more common opinions, that a distinction between a trade of this sort, carried on with foreign ships and territories, and a trade of the same sort, carried on with British ships and territories, is thus noted. The more closely it is examined into, the more immaterial will this distinction, I believe, be found to be. What is gained in this way upon his Majesty's subjects resident in New South Wales, by his Majesty's subjects resident in Old Britain, operates in no greater degree in diminution of taxes (taxes raised upon his Majesty's subjects resident in Old Britain,) than if it had been gained by those same subjects of his Majesty in other ways, or gained by foreigners. The real mischief is—that wealth in any shape—in that of money, as well as in any other, and not more than in any other—that wealth in any shape, raised without equivalent, and therefore in the way of compulsion, by taxes, should be parted with for such a fragment of an equivalent—should, as to so large a proportion of it, be parted with, without equivalent—by those whose means of subsistence are composed of it, and limited in their amount by the value of the goods obtained in exchange for it. They are thus loaded with a continual tax, to the amount of the difference between the price they are thus obliged to give in the improved colony, and the price for which they might have provided themselves with the same articles had they staid at home.

In proposing what presents itself to him in the character of a remedy, the worthy magistrate does not consider that the evil, such as it is, is rooted in the very nature of the colony, and bids defiance, not only to the remedy proposed, but to every other. For many articles which the colony does not produce, a demand—a continual demand exists in the colony:—and that demand is (in the language of Adam Smith) an *effectual* demand; since, for a certain portion of what they would wish to have, men have that which will be accepted of by the proprietors as an equivalent, viz. hard money. If the country produced anything that would be worth sending to other countries, that would be better worth sending than money—so much as it produced in this shape, so much would be so disposed of, and the equivalent in money saved. But the country does *not* afford any such internal produce. Whatever it does produce is consumed by the inhabitants, affording them a part, and but a part, of their subsistence. Part of it is, without changing hands, consumed by the persons by whom it is produced: the remainder changes hands, and is purchased — either by the Governor there, in exchange for the hard money he receives from England, or by the functionaries of government, in exchange for money received by them, in the shape of pay, from the same source.

In the nature of men and things, is it possible to keep money from going out of a country, where (besides that the export of money out of it is not prohibited) men have on the one hand *wants*, on the other hand *money*, and nothing but money to give in exchange?

* Collins, I. Preface, pp. 9, 10.

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way to New South Wales — on these considerations it should seem, that to be at hand for service in the East Indies, any given number of soldiers would be rather more usefully stationed if landed at once at that port, whatever it be, of the East Indies, which at any given point of time seemed likely to afford the speediest demand for their services, than if sent onwards, two or three months' voyage farther to New South Wales, for the chance of getting them back again upon occasion by another voyage of the same length. The two wars with Tippoo Saib present the two occasions on which, since the foundation of the colony, the demand for soldiers in the East Indies seems to have been at its highest pitch. I dare venture to hope that, for some years at least, if not generations, there will not be such another. It does not appear that on either of those occasions any great use was made of that part of his Majesty's army which was stationed in New South Wales.

If not in any state of things resembling the present, I am at a loss to conceive in what probable future state of things gentlemen here at home should, on any principles whatsoever, be either warranted in keeping up, or in any degree even disposed to keep up, in the ever so much "improved" colony, a superfluous detachment, applicable to the service of the mother country, in the East Indies.

As to *seamen*, men and boys may be sent on this voyage, with, for aught I know, as much advantage in point of instruction in seamanship as on any other voyage or succession of voyages, of the same length: but their proficiency in point of seamanship would not, I suppose, be much the less, if the voyage were performed at once in those other tracks, in reference to which a voyage in this track is supposed to serve as a *school* or "*nursery*," and if there were something to be brought that were worth bringing so far from the country to which they are sent. When the vessels that have carried out from Britain goods and passengers to New South Wales, have brought any thing home, it has been (if I am not mistaken) either from China or the East Indies: so that the advantage in respect of the nursery for *seamen* has been pretty much of the same sort and degree as the advantage just mentioned in respect of the nursery for *soldiers*. If, in this case, there be any occult property in a round-about voyage that renders it preferable to a direct one, the case (I think) must be much the same in other voyages: in which case, the policy would be to establish some general and comprehensive system, for preventing vessels in general from arriving at their respective places of ultimate destination so soon as they would otherwise.

Wise or otherwise, the argument, it must be confessed, is far enough from being an unpopular one: navigation—(conveyance on the favourite element) — navigation, like trade, considered as an *end*, rather than as a *means*: or if as a means, as a means with reference to colonies. Here again comes in the ancient and favourite circle: a circle by which, in defiance of logic and mathematics, political conduct is squared, and wars generated. What are colonies good for? — for nursing so vast a navy. What is so vast a navy good for? — for keeping and conquering colonies.

A construction that might possibly have been put upon the supposed utility of the colony in the character of a *nursery*, receives a direct and decided negative from the author in the course of the book: I mean, the supposition that it was from among the convicts themselves that the two branches of the public service were to receive their recruits. Upon this construction a negative is put, not only by declared opinion, but by the specific experiences by which that opinion was produced.*

* No. 1. *September* 1794, p. 391.—"Eight convicts were pardoned on condition of their serving in the New South Wales corps until regularly discharged therefrom.

"It was pleasing to see so many people withdrawing from the society of vice and wretchedness, and forming such a character for themselves as to be thought deserving of emancipation." — Pleasing certainly for the time, but observe the upshot, as per No. 3.

No. 2. *October* 1794, p. 395.—"A guard of an ensign and twenty-one privates of the New South Wales corps were on board the transport. Six of their people were deserters from other regiments brought from the Savoy; one of them, Joseph Draper, we understood, had been tried for mutiny (of an aggravated kind) at Quebec.

"This mode of recruiting the regiment must have proved as disgusting to the officers, as it was detrimental to the interests of the settlement. If the corps was raised for the purpose of protecting the civil establishment, and of bringing a counterpoise to the vices and crimes which might naturally be expected to exist among the convicts, it ought to have been carefully formed from the best characters; instead of which, we now found a mutineer—(a wretch who could deliberate with others, and consent himself, to be the chosen instrument of the destruction of his sovereign's son) sent among us, to remain for life, perhaps, as a check upon sedition, now added to the catalogue of our other imported vices."

No. 3. *February* 1796, p. 455.—"The most active of the soldiers in this affair" [a riot] "had formerly been *convicts, who, not having changed their principles with their condition*, thus became the means of disgracing their fellow soldiers. The corps certainly was not much improved by the introduction of people of this description among them. It might well have been supposed, that being taken as good characters from the class of prisoners, they would have felt themselves above mixing with any of them afterwards; but it happened otherwise. They had nothing in them of that pride which is termed *esprit de corps*, but at times mixed with the convicts familiarly as former companions; yet, when they chose to quarrel with, or complain of them, they meanly asserted their superiority as soldiers."

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Be this as it may, of this stamp (it may naturally enough be conceived) were the ingredients of that mass of "*political advantage*," "the prospect of which" (our historiographer informs us) "was" actually "presented by the plan to the patriotism of its noble originator" (the late Lord Sydney) —a prospect which appears to have all along presented itself in colours equally pleasing to his Lordship's successors on the second floor of the treasury, as well as to his and their colleagues on the first—I mean always down to a point of time, the fixation of which I must beg leave to submit to your Lordship, to whom it is as precisely known as it is completely unscrutable to me at my humble distance.

The importance of these same elements of political advantage will appear in the clearer light, if they be admitted to be, what to my humble apprehension they appear to be, fair and correct samples of all those "*indemnities for the past*"—all those "*securities for the future*"—which have ever been presented by anything else that has ever borne the name of a colony, to the scrutinizing optics of those well exercised cultivators—some of them (as your Lordship has seen) professed panegyrists—"of *arithmetic and its calculations.*" If a fit standard of "appeal" on the subject of the burthens on the civil list, it can scarcely be a very unfit one on the subject either of the burthens or of the benefits from this or other colonies. But it is only where wisdom or fortune happen to have put right honourable gentlemen in possession of what presents itself to them as a good case, that they have either pens or tongues or so much as ears for any such undistinguished and undistinguishable individual as he who, on this ground, as well as some other already mentioned corners of the field of economy, would be proud to wait upon them in the character of a co-appellant.

In what then consists the real acquisition, the real advantage derived from the plan of colonizing the antipodes—colonizing them with settlers selected for their unfitness for colonization? This real acquisition (for *one* real one I do not dispute) I will beg leave to present your Lordship with an honest view of.

Two hundred and fifty plants, or thereabouts—two hundred and fifty new discovered plants—composed the amount of the stock of vegetable curiosities that had been imported from thence in 1796, according to the estimate communicated to me (in 1796 I think it was, or 1797) by Lieutenant-colonel Paterson, the chief upon the botanical staff of that colony, as well as upon the military.

In these two hundred and fifty plants, together with such others as may have been added to the number since, your Lordship sees the whole of the real gain that has ever been reaped, or can, on any tolerably rational ground, be expected ever to be reaped, by this our mother country, from that ever so much "improved" colony. In speaking of this as a *gain*, I admit it to be a *real* one: in my own person, by the evidence of my own taste, I feel it such.

But plants, my Lord, as well as gold, may

No. 4. *May* 1796, p. 475.—"Arrived two officers of the Bengal army, and a surgeon of the military establishment, for the purpose of raising 200 recruits from among those people who had served their respective terms of transportation. They were to be regularly enlisted and attested, and were to receive bounty-money.

"On the first view of this scheme, it appeared very plausible; and we imagined that the execution of it would be attended with much good to the settlement, by ridding it of many of those wretches whom we had too much reason to deem our greatest nuisances; but when we found that the recruiting officer was instructed to be nice as to the characters of those he should enlist, and to entertain none that were of known bad morals, we perceived that the settlement would derive less benefit from it than was at first expected. There was also some reason to suppose, that *several settlers would abandon their farms*, and leaving their families a burden to the store, *embrace the change* which was offered them, *by enlisting as East India soldiers*. It was far better for us, if any were capable of bearing arms and becoming soldiers, to arm them in defence of their own lives and possessions, and by embodying them from time to time as a militia, save to the public the expense of a regiment or corps raised for the mere purpose of protecting the public stores and the civil establishment of the colony.

"Recruiting, therefore, in this colony for the Bengal army being a measure that required some consideration, and which the Governor thought should first have obtained the sanction of administration, he determined to wait the result of a communication on the subject with the Secretary of State, before he gave it his countenance. At the same time, he meant to recommend it in a certain degree, as it was evident that many good recruits might be taken, without any injury to the interests of the settlement, from that class of our people who, being no longer prisoners, declined labouring for government, and, without any visible means of subsisting, lived where and how they chose."

Good—in the mouth of a governor of the "improved" colony, looking to the interests of that same colony, and to no other interests—the worse the nuisance, the better the riddance. But a Governor of Bengal?—what, on such an occasion, might be expected to be his language? Let the late chief magistrate of the "improved" colony, Lieutenant-colonel Collins, speak for him: "What community," says he, speaking of the colony at the latest and most improved period of its existence, May 1800, (ii. 295,) and on the very question respecting the endurance of the emigrants from thence, in this very country of Bengal—"what community, where honesty and morality was cultivated, would not deprecate even the *possibility* of such characters mixing with them, with as much earnestness as a people in health would dread the importation of a *plague* or a *yellow-fever*."

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be bought too dear: and moreover, though it were fit to make as light of money as right honourable gentlemen appear on this occasion to have made of it, still, in the account of population, for each vegetable acquired your Lordship would find, I believe, some number of human lives most miserably destroyed; nor, after all, is it altogether necessary to the gathering seeds in a country, that a colony should be planted in it.

I know that, for economy like that in question, something like a precedent might be found: but unfortunately it is not broad enough. What the island, to which Botany Bay has given its name and character, was to the first Lord Sydney, this island of ours was in its day to a still more illustrious student in natural history, that first of conchologists and of conchologists — the Emperor Claudius. I say, my Lord, with submission, the precedent is not broad enough. To reap the fruit of his expedition to this wild country, the Emperor employed an army, we are told, in gathering shells here. So far the parallel runs, but no further. Employ an army here in shell gathering? Yes: but he did not leave one here.

In return for so many choice and physical plants transplanted *from* the colony, there is one plant, though it be but a metaphorical one, which has been planted *in* the colony, and of the planting of which, the founders of Botany Bay have the indisputable merit — (God forbid that it should ever be of the number of those *transplanted hither!*) and that is — the plant of *military despotism.* — Of this plant, in the soil and situation in which it is thus planted, it may be said, with at least as much truth as once by a celebrated verbal florist,* it was said of *true glory* (I think it was, or some such vegetable,) *radices agit et propagatur.* Unhappily, in the next island to this we have it already, though it is there (God be thanked!) but an annual plant; and even there men had rather see it on the dunghill than in the hot-house: nor in saying *men* am I uncandid enough to except even the very men who planted it there. In the other island—the seven months distant island — it is perennial; and the very geographical position of the country—with or without the particular nature of the use thus made of it — is enough to make it such.

My Lord, I could not use a poisoned weapon, though life depended on it. Without discrimination, I neither condemn *martial law* — nor even *torture.* Of words significative of ideas thus complex and thus extensive, a proposition can scarcely be framed, that shall at once be clear of all exception and be true. Knowing that government throughout is but a choice of evils, I am on every occasion ready to embrace the least of any two, whatever may be its name. In speaking of the colony as a vast conservatory of military law, I am therefore far enough from saying either that *that* law ought now to be abolished there (supposing the settlement with its abominations to be persevered in) — or even that it ought not to have been introduced. Odious as the plant is — fœtid as it is, even at that vast distance, to the sense of every true Briton — yet in that distant country, in which it has thus been planted, I admit it to be an useful one — I admit it even to be a necessary one. Yet this, my Lord, I will be bold to say — and let those to whom it is sweetest, contradict me if they dare — that the *end* for which it is employed must be pure and clear of all objection — must be pure indeed, if there be virtue in it to afford a sanction to such *means.*

* Cicero.

I have already mentioned (p. 180) my intention of submitting to your Lordship a view of the subsequent symptoms of improvement that have manifested themselves in the improved colony, according to the history of it, as brought down to the time of the latest accounts (dated August 1801,) by the second volume of the valuable book so often mentioned. To this view it has since occurred to me to subjoin, by way of contrast, a view of the effects of the penitentiary system, as established in several of the *American states:* pointing out at the same time, in these latter establishments, a few particulars from whence a conception may be formed, whether their salutary efficacy would have experienced any diminution had the economical and moral features of the system been crowned by the *architectural* features of the panopticon or *central inspection* principle. At the outset of the letter, not to trouble your Lordship oftener than necessary, my intention was to have included this ulterior matter in the compass of it; but, considering that, of the three months within which your Lordship had the goodness to say you would "endeavour to get something settled" (I mean between the 19th of August and the meeting of Parliament,) two months and a half are already gone — and considering that there remains accordingly but a fortnight for the accomplishment of those endeavours — and considering that under your Lordship's anxiety for the accomplishment of them, the conversations your Lordship was to have had with the Chancellor and the Judges, may have been brought to a conclusion any day, while these pages were but bringing to a conclusion — under the spur of all these incentives, I find myself compelled by necessity to refer to a further day, and to a second letter, all such supplemental matter — and, for the moment, to subscribe myself thus abruptly, my Lord, your Lordship's most obedient and humble servant, JEREMY BENTHAM.

Queen's Square Place, Westminster,
2d November 1802.

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SECOND LETTER TO LORD PELHAM, &c. &c. &c.

IN CONTINUATION OF

THE COMPARATIVE VIEW OF THE SYSTEM OF PENAL COLONIZATION IN NEW SOUTH WALES,

AND THE

HOME PENITENTIARY SYSTEM,

PRESCRIBED BY TWO ACTS OF PARLIAMENT OF THE YEARS 1794 AND 1799.

MY LORD,

I RESUME the pen. I now submit to your Lordship the promised continuation, together with the promised contrast. On the one hand, the effects of the penal colonization system in New South Wales: on the other hand, the effects of the penitentiary system in North America: the good effects of it, even in its least perfect state: subject still to those imperfections for which the *central-inspection* principle presents, as I flatter myself your Lordship will recognise, a most complete and indisputable cure.

Before the picture of reformation, as it has shone forth in that rising quarter of the world, is begun to be displayed, a few words will be necessary for the purpose of fixing places, times, and vouchers. Permit me accordingly to convey your Lordship's attention for a moment, to that scene of *quondam* transportation — suffer me to set it down among our *ci-devant* colonies — the now happily independent (and long may they remain so!) *United States*. Instruction grows there; your Lordship would not disdain it, though it were from enemies: how much longer shall it remain unprofited by us, sent to us, as it has been so long ago — sent to us from relatives and friends?

It was Pennsylvania that took the lead. To the task of reformation, or at any rate to the change which presented itself under that name, the first hand was there set in 1786. In that year passed an act for a new system of punishment, under which hard labour should take place of imprisoned idleness: — labour, and that hard enough: but to be performed in public, in an ignominious garb, in irons, by men in gangs on the roads, and even in the streets. Under this first plan, though already in use in Switzerland, and as such indicated by Howard, success was soon observed to fall short of expectation.* The friends of reformation were, however, not to be discouraged. An experiment of four years

* *Lownes*, p. 76.—"In the year 1776, the Convention of Pennsylvania directed a reform of the penal laws, and the introduction of *public* hard labour, as a punishment for offences. This was attended to by the legislature, and an essay was made in the year 1786, by a law which directed that the convicts should be employed in cleaning the streets, repairing the roads, &c., have their heads *shaved*, and be distinguished by an *infamous* habit. This was literally complied with; but, however well meant, was soon found to be productive of the *greatest evils*, and had a very opposite effect from what was contemplated by the framers of the law. The disorders in society, the robberies, burglaries, breaches of prisons, alarms in town and country — the drunkenness, profanity, and indecencies of the prisoners in the street, must be in the memory of most. With these disorders, the numbers of the criminals increased to such a degree, as to alarm the community with fears that it would be impossible to find a place either large or strong enough to hold them. The severity of the law, and disgraceful manner of executing it, led to a proportionate degree of depravity and insensibility, and every spark of morality appeared to be destroyed. The keepers were armed with swords, blunderbusses, and other weapons of destruction: the prisoners secured by cumbrous iron collars and chains fixed to bombshells. Their dress was formed with every mark of disgrace. The old and hardened offender daily in the practice of begging and insulting the inhabitants—collecting crowds of idle boys, and holding with them the most indecent and improper conversation. Thus disgracefully treated, and *heated with liquor*, they meditated and executed plans of escape—and, when at liberty, their distress, disgrace, and fears, prompted them to violent acts, to satisfy the immediate demands of nature. Their attacks upon society were well known to be desperate, and to some they proved fatal!"

Observations. — In this disastrous and justly exploded, though neither unexampled, nor in every respect discommendable system, your Lordship will immediately recognise the New South Wales *jail gangs*. Not that the parallel reflects anything like blame upon those who instituted them in the "improved" colony. What is one man's meat is another man's poison: mis-

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was on that theatre deemed a sufficient trial. Men were not there too dim-sighted to see, too careless to observe, too unfeeling to regret, too proud to confess an error, or too indolent to repair it. In 1790, after a hard-fought battle of such battles as quakers fight, and on both sides it is confessed an honest one (on both sides, my Lord, what is essential to honesty, an open one,) by an act of that date they set on foot another experiment — they obtained a second change. The badge of infamy was now pulled off: "the iron entered no longer into the afflicted soul;" separation, as far as means permitted, took place of promiscuous aggregation; seclusion, yet not unseen, succeeded to tumultuous publicity. This second experiment was successful almost beyond hope: how eminently so, your Lordship will see as we advance.

Penitentiary houses, at present two: at Philadelphia and New York. In that at Philadelphia, the plan of management under its present form, commencing in April 1790; the prison in New York, begun in 1796, completed in 1797;* month not mentioned. I speak of those from which accounts have reached us. Two others already in existence in New Jersey and Virginia.† Two more in contemplation last year, and begun perhaps by this time — in Massachusetts and South Carolina.

Historians, four: I mention them in the order of their dates: dates are not to be despised in histories. For the Philadelphia house three:—1. *Lownes*, the chief projector, whose account of it comes at the end of a pamphlet on the punishment of death by his co-operator *Bradford*, then one of the judges of the State, since deceased; date in the preface, February 26, 1793. 2. The *Duke de Liancourt*, a visitor (a veteran in the service of the prisoner and the poor); Philadelphia printed, London reprinted, second edition, date in title-page 1796; year of visitation from private information 1795.‡ *Turnbull* of South Carolina (another philanthropic visitor;) date in preface, 4th August 1796; date in title-page 1797. For the New York house, one: Eddy, New York printed; date in title-page 1801; date of subsequent report annexed, 9th February 1802.

The Pennsylvania house is that which, as the date itself shews, served as an example, and naturally as far as circumstances permitted, as a model. New York follows next. — Caleb Lownes took the lead in Philadelphia. Thomas Eddy followed him in New York. In both these men, your Lordship will find, under the garb of a quaker, the head of a statesman, as well as the pen of an academic.

After this short introductory view of the transactions in North America, permit me to wait upon your Lordship back again for a moment, to New South Wales.

Facts compose the chief matter of this supplemental address: and in how eminent a degree the general propositions advanced in the preceding one will be found to receive confirmation from these facts, is a point I have already ventured to give intimation of.

In a tract like this, history in its own order is but a labyrinth, but to this labyrinth here as before, the *ends* of penal justice hold out a clue.

Under the head of *reformation*, replaced in New South Wales by *corruption*, I will beg leave to attend your Lordship from effects to causes; and among effects, again, from smaller to greater — from the lighter shades of depravity to the darker: presenting the effects in this order, lest the opposite one, though in other respects perhaps the more obvious one, should have produced the sensation of an anti-climax. In subordination, however, to these *logical* principles of arrangement, the *chronological* one will have its use: it will serve all along to show, and in an order perfectly natural, the progress of the "improved" colony from bad to worse. Matter thus pregnant, cannot but give birth to a variety of observations; but this will in general be most readily apprehended, and most effectually recommended, when preceded by the particulars by which they were respectively suggested.

Our authors not having had themselves any such arrangements in their view, the matter belonging to one head will every now and then, in the shape in which it comes from their hands, be found intermixed with matter belonging to another. This incongruity, which, however, is but a merely relative one, cannot always be cleared away: all that can be done with it is to point it out: this done, now and then a repetition constitutes the sum of the inconveniences.

Under each head, each picture has two

chief could not *but* be done by them in Philadelphia: mischief could *not* be done by them in New South Wales. In Philadelphia, their deportment was an object of disgust and terror to the great bulk of the passing multitude: it became, notwithstanding — such is the power of example, even the example of wretchedness and infamy over some minds—it became in one way or other a source of corruption to a few. In New South Wales, society was proof against both mischiefs — no eye to which the deportment of the profligate was not much more familiar than any other: no ear — which had any unlearned wickedness to learn of them. Jet cannot be blackened: putridity cannot be corrupted.

* Eddy, p. 17. † Ibid. p. 70.

‡ It was in that year that it came to me in French, from the worthy author, in manuscript, and (for I know not what cause relative to the calamities of the times) under the seal of secresy. It was not till the next year I had the satisfaction of finding myself released from the obligation, by an advertisement announcing a translation of it in English.

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sides: one for the *soi-disant* "improved" colony; the other for those really improved countries, whose apprenticeship in the form of colonies is expired. For each feature of depravity and corruption on the one side, your Lordship will see, on the other side according to the nature of the feature, either a blank for the absence of it, or a space filled with the opposite feature of virtue and reformation.

I. REFORMATION.—*First feature, Industry: Opposite feature of Corruption, Sloth;—Prevalence of it in New South Wales.*

No. 1, p. 23. *February* 1797.—"An extraordinary theft was committed about the middle of the month, which very forcibly marked the inherent depravity of some of these miscreants. While the miller was absent for a short time, part of the sails belonging to the mill were stolen. Now this machine was at work for the benefit of those very incorrigible vagabonds who had thus for a time prevented its being of use to any one, and *who, being too lazy to grind for themselves, had formerly been obliged to pay one third of their whole allowance of wheat, to have the remainder ground for them* by hand-mills—an expense that was saved to them by bringing their corn to the public mill."

No. 2, p. 40. *June* 1797.—"In consequence of the proclamation which was issued in the last month, one of the run-away convicts delivered himself up to a constable, and another was taken, and lodged in confinement: they appeared to be half starved; yet their sufferings were not sufficient to prevent similar desertions from work in others, nor a repetition of the offence in themselves; such was the strong aversion which these worthless characters had to anything that bore the name of *work*. More labour would have been performed in this country by 100 people from any part of England or Scotland, than had at any time been derived from 300 of these people, *with all the attention that could be paid to them.*"

Observations.—Which "all" (it appears, as well from the nature of the case as from passage upon passage in the history) could not be much:—a fresh occasion for bringing to view that deficiency of necessary inspection which is among the indelible features of the system of forced colonization.

No. 3, p. 202. *March* 1799.—At this time, "among other public works in hand were, the raising the walls of the new gaol, laying the upper floor of the windmill, and erecting the churches at Sydney and Paramatta. Most of these buildings did not advance so rapidly as the necessity for them required, owing to the weakness of the public gangs; and indeed *scarcely had there ever been a thorough day's labour, such as is performed by a labouring man in England, obtained from them. They never felt themselves interested in the effect of their work, knowing that the ration* from the store, whatever it might be, *would be issued* to them, *whether* they *earned* it or *not;* unlike the labouring man, whose subsistence and that of his family depends upon his exertions. *For* the individual who would pay them for their services with *spirits*, they would labour while *they had strength to lift the hoe or the axe;* but when government required the production of that strength, it was not forthcoming; and *it was more to be wondered that, under such disadvantages, so much, rather than so little, had been done.* The convicts whose services belonged to the crown were for the most part a wretched, worthless, dissipated set, who never thought beyond the present moment; and they were for ever employed in rendering that moment as easy to themselves as their invention could enable them.

"Of the settlers and their disposition much has been already said. The assistance and encouragement which from time to time were given them, they were not found to deserve. *The greater part had originally been convicts,* and it is not to be supposed that while they continued in that state, their habits were much improved. With these habits, then, they became freemen and settlers; the effect of which was, to render them insolent and presuming; *and most of them continued a dead weight upon the government, without reducing the expenses of the colony.*"

Observations.—The features of worthlessness are ascribed to them ("*the settlers*") in general: the non-convicts are alluded to, and are not excepted. In this view of it, the improved colony presents the picture of a community, in which not only the corrupt members of it are not amended, but the sound members—such as had been introduced into it—are corrupted. If such be the case, there is nothing in it but what ought to have been expected. In Letter I. page 210, instances in proof of it have been already given, in speaking of the *soldiery:* and more will come to be given under the head of *Public Functionaries.*

No. 4, p. 277. *December* 1799.—"The harvest was now begun, and constables were sent to the Hawkesbury, with directions to secure every vagrant they could meet, and bring them to Sydney, unless they chose to work for the settlers, who were willing to pay them *a dollar each day, and their provisions;* for at this time there were a great number of persons in that district, styling themselves free people, who refused to labour unless they were paid the most exorbitant wages."

Observations.—Standing out for the best wages that could be got, is no proof of sloth: it is rather a proof of that appetite for gain, which is the spur and natural concomitant

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to industry; but high as the wages were, it appears there were vagrants, who preferred idleness even to such high wages.

No. 5, p. 314. *August* 1801. — "Nothing has been said, in this account of the public labour, of preparing the government ground annually for seed, and cropping it, or of gathering the harvest when ripe. But these must be taken into account, as well as threshing the corn for delivery, and unloading the storeships on their arrival; which latter work must always be completed within a limited time, pursuant to their charters. It has been said before, that it was *impossible to obtain a fair day's work from the convicts, when employed for the public:* the weather frequently interfered with out-door business, and occasioned much to be done a second time. Under all these disadvantages, and with a turbulent refractory body of prisoners, we are warranted in saying, on thus summing up of the whole of the public labour during the last four years, that more could not have been performed; and that it is rather matter of wonder that so much had been obtained with such means."

Observations. — Of wonder indeed! The worse the system, the greater the wonder that any given quantity of good works, how small soever, should be shown forth under it. The more irremediably bad — the more irreproachable the conduct, the more pitiable the lot, of those whose misfortune it was to have the management of it on the spot. The more radically bad the system, the more inexcusable those at home who planned it, but most of all those at home who persevered in it, its deformities all the while staring them in the face. The period is an early one for such reflections; but they accompany the idea of the "improved" colony from the very first glance, and never leave it till the last.

II. *Further features of* REFORMATION — *Frugality and Forecast: Opposite features of Corruption, Prodigality and Improvidence; — Prevalence of them in New South Wales.*

No. 1, p. 21. *February* 1797. — "It now appeared, that to obtain spirituous liquors, these people, the settlers, had incurred debts to so great an amount, as to preclude the most distant hope of liquidating them, except by selling their farms. Thus all their former industry must be sacrificed to discharge debts, which were contracted *for the temporary gratification of being steeped in beastly intoxication* for a certain length of time. All the cautions which had occasionally been inserted in the *public orders* against this dangerous practice, had not proved of any advantage to those whose benefit they were intended to promote; and it was observed with concern, that several scenes of shameful imposition, which had been practised by the retail dealers in this article, were brought to light by this investigation."

Observations. — Intermixed with the prodigality and the improvidence (your Lordship sees) comes *drunkenness:* but drunkenness comes in everywhere, and with every thing. We shall, however, have a head appropriated to it. All this reprobacy, too, (is it credible?) spite of all these *public orders* — all this *good advice* from the governor: pearls of which there has never been any want among these swine. Of the water of these pearls something will come to be said under the head of *Drunkenness.*

No. 2, p. 96. *March* 5, 1798. — "Speaking of the business before a court of civil judicature," "this," says our author, "consisted chiefly of litigation about debts contracted between the retail dealers and the settlers. As a proof to what a height this business had reached, it need only be mentioned, that an appeal was made to the governor in one prosecution for a debt of £868 : 16 : 10; which appeal was, however, withdrawn, the defendant consenting to pay the debt."

Observations. — No small mass of property to be amassed in such a place: but of the *source* of it mention has been already made under the head of Colonies (Letter I. page 207); and of the *security* of it, more may come to be said under the head of *Economy,* towards the close of the present letter.

No. 3, p. 97, 98. *March* 1798. — "The governor having received from the settlers in each district a clear and correct statement of their grievances and distresses, informed them that it was with real concern he beheld the effects of the meeting of each civil court which for the public accommodation he from time to time had occasion to assemble. The vast load of debt with which they so frequently felt themselves burthened *through the imposition and extortion of the multitude of petty dealers,* by whom the colony was so much troubled, with the *difficulties* under which the industrious man laboured *for want of some other mode of providing the necessaries* which he required, were grievances of which he was determined to get the better; and, as far as his situation would authorise him, he would adopt every means in his power to afford them relief.

"To this end he found it absolutely necessary to suppress many of those *licensed public houses,* which, when first permitted, were designed as a convenience to the labouring people; but which he now saw were the principal cause whence many had candidly confessed their ruin to have sprung.

"He wished it were possible to dissuade them from heaping such heavy debts upon themselves by the enjoyment of articles which they could do without, or by throwing away

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their money in purchasing at every public auction rags and trifles for which such exorbitant sums were exacted. He urged them with a paternal anxiety to consider that their folly involved their whole families in ruin and misfortune, and conjured them to wait with patience the result of some representations which he had made to government, as well in their behalf as in behalf of the settlers upon Norfolk Island; by which he hoped that ere long they would have an opportunity of purchasing every European article that they might want, at such a reasonable and moderate price as they by their industry would be very well able to afford from the produce of their labour.

"The island upon which Captain Hamilton had run his ship, and thereby prevented her sinking with them at sea, was thenceforward to be distinguished by the name of Preservation Island. From thence, the colonial schooner had arrived with what remained of the property. As soon as she was unloaded, the property was put up to sale for the benefit of the underwriters, when the *little effect of the governor's recommendation of patience was seen by the most enormous prices being paid for every article. The money that should have been expended in the cultivation and improvement of their farms was thus lavishly thrown away;* and it happened fortunately enough for the underwriters that the wheat of this last season had been received into the public granary, and immediately paid for. *Twenty-two shillings were paid at this sale for one common cup and saucer.*"

Observations. — Besides prodigality and improvidence, more drunkenness, more good advice, as pregnant as ever with good effects. But of this in its place, as already mentioned. "*Imposition* and *extortion*," the fruit "*of the multitude of the dealers*"? Say rather, of the smallness of their number. In the multitude of dealers, much more surely than of "*counsellors*," there is safety. Copies of Adam Smith do not appear to have been abundant in the libraries of New South Wales.

Government to turn shopkeeper! — Perhaps a necessary remedy — not improbably a costly, and therefore most certainly a formidable one. *Away with it! cries Adam Smith.* But most assuredly, among the nations whose wealth he had in view, was no such nation as New South Wales. Of this further, perhaps, under the head of *Economy*.

No. 4, p. 120. *July* 1798. — "The ready sale which the speculators who called here constantly found for their cargoes, together with the ruinous traffic which was carried on by means of the monopolies that existed, in opposition to every order and endeavour to prevent them, would, beyond a doubt, without the establishment of a *public store* on the part of government, keep the settlers and others in a continual state of beggary, and extremely retard the progressive improvement of the colony."

No. 5, p. 198. *February* 1799. — "Presuming on the late inefficient harvest, the *settlers* requested again to be supplied with seed-wheat from the store, but were refused. It was well known that they sold for spirits, to the last bushel of their crop, and left their families without bread. Then they pleaded poverty and distress, and their utter inability to pay what they had borrowed. When seed has been lent them, they have not unfrequently been seen to sell it at the door of the store whence they received it."

Observations. — Again *the* settlers no exception in favour of *non-convicts.*

No. 6, p. 279. *January* 3, 1800. — "The Swallow, East-India packet, anchored in the Cove, on her way to China. She had on board a great variety of articles for sale, which were intended for the China market; but the master thought, and actually found it worth his while to gratify the inhabitants, particularly the females, with a display of many elegant articles of dress from Bond Street, and other fashionable repositories of the metropolis.

"On the 11th, the Minerva transport arrived from Ireland. Having touched at Rio de Janeiro, she had brought many articles for sale, as well from that port as from England, most of which were much wanted by the inhabitants; but the prices required for them were such as to drain the colony of every shilling that could be got together."

Observations. — Of this already (Letter I. page 207,) in speaking of paper money, and the staple trade of this peculiar colony.

III. *Per Contra* — INDUSTRY, FRUGALITY, FORECAST, *in the American Penitentiary Houses.*

1. *Philadelphia House, instituted* 1790.

No. 1. Philadelphia; 1795: Laincourt, p. 14.—"Out of his profits the prisoner is obliged to pay his board, and the price of, or in some cases a certain rent or hire for the instruments he uses. These payments, which are necessarily determined by the current price of commodities, are fixed by the inspectors four times in every year. At present it amounts to one-sixth of a dollar for each man's board. The *most infirm*, however, *may earn easily twenty pence per day*, by picking oakum; and there *are some who earn above a dollar.*"

No. 2. Philadelphia; 1796: Turnbull, p. 16. — "For each convict a separate account is kept by the jailor, charging him with his clothing, sustenance, &c.; and in which a reasonable allowance for his labour is credited. It is generally rather less than the wages of other workmen in the city. These accounts

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are balanced at short periods, in order that the overplus or proportion which might be due to the prisoner, may be paid into the county treasury for safe keeping; and, once in every three months, they are audited before the inspectors. The committee of inspectors, once during the same period of time, fix the charges for the *prisoners' maintenance*, which depend on the existing price of provisions, &c. It is now *one shilling and threepence a-day for the males, and sevenpence for the females.* There are *few who do not earn above two shillings.* The marble sawing and manufacturing of nails are the most lucrative employments followed in the prison. *Several* were pointed out to us, who earned at these occupations *above a dollar*, and *one* in particular whose daily labour averaged *one dollar and a half.*"

No. 3. Ib. p. 48.—"Some have appropriated the proceeds of their labour, while in confinement, to the support of their families; and several, on leaving the prison, have received 40 or 50 dollars (4s. 6d.) the overplus of the profits of their labour, and with this capital turned out honest and industrious members of society."

2. *New York House, instituted* 1790.

No. 4. New York; 1802: Eddy, p. 94.—"The convicts have now become more skilful workmen, and can perform more labour, and to greater advantage, than heretofore."

Observations.—In this more recent prison, the economy, it appears, had not yet attained to such a pitch of perfection as to afford to the public a profit equal to the expense of the convict's maintenance. Under the Philadelphia system, no allowance was to commence in favour of any convict, till after the estimated expense of his share in the aggregate expense of the prison, or at least the greater part of that expense, had been reimbursed. The New York institution appears to have had disadvantages of its own to struggle with, which by the last accounts were not yet overcome; but which, by the same accounts, were in a way to be overcome. At Philadelphia, the charge against the convict appears to have been fixed at so low a rate, that from the first some surplus went into the pocket of the convict workman, the most unskilful not excepted. Whether the same policy has been pursued, and in the same degree, at New York, I have not found. I should rather expect to find, not; and in that case I am inclined to think that a little more liberality under this head might, even in the way of economy, have been attended with advantage.

Supposing this feature in the Philadelphia system to have been copied in New York, there being no surplus for the convict workman, the virtues of frugality and forecast would not in his instance find any ground to build upon.

3. *Penitentiary system: Panopticon mode.*

This spur to industry presented itself to me from the first as a very material implement in the apparatus of reformation. In 1793, when I was arranging with Mr. (now Sir Evan) Nepean (then under-secretary of state under Mr. Dundas) those terms of *contract*, which, without much variation, were afterwards approved of at the Treasury, and are printed in the 28th Report of the Committee of Finance—on this occasion, in my accepted *proposal*, on the ground of which we were proceeding, a fourth part having been specified by me as the share I was willing to allow, at the same instant *he* happened to mention a sixth part as the share he had thought of. Without hesitation I declined taking advantage of this facility. A fourth part (I recollected) was the share mentioned by Howard as that which, judging from his experience, he looked upon as capable of inspiring the requisite degree of *alacrity*. It went against me to give less than what had been recommended by so approved a judge: and, moreover, under my plan there was a particular reason for not falling short of that mark; since, for the fulfilment of the article relative to the *superannuation annuity*, I reserved to myself the power of retaining in my hands as far as the half of each man's allowance, in which case the share received by him, in the shape of *present* allowance, would be reduced to an eighth.

While yet on the road to *reformation*, the discussion of these points, though by no means unapposite to that head, has at the same time led us, though prematurely, into a corner of the field of *economy*. Just entered upon, and that but *en passant*, and already, my Lord, what a light breaks in upon it! In the account of expense compare this 0, or rather this *minus x* per annum, with the *plus* £46 of New South Wales.

IV.—General Depravity—*Prevalence of it in New South Wales, as attested in general expressions.*

No. 1. II. Collins, p. 2. *October* 1796.—"The frequent commission of the most atrocious crimes, together with the dissipated, turbulent, and abandoned disposition of the convicts, had more than ever at this time been manifest."

Observations.—Practical inference—resolution to construct the two prisons, above spoken of, at Sydney and Paramatta.*

No. 2. Ib. p. 3. *October* 1796.—"Far too many of them were most incorrigibly flagitious."

* Supra, p. 181.

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Observations.—Practical inference: forming (as above) the most incorrigible of them into a *jail gang* (Letter I. p. 181.)

No. 3, Ib. p. 9. *October* 1796.—"The morality of the settlement is" expressly stated as "a point which he" (the governor) "could not venture to promise himself that he *should ever attain.*"

No. 4, Ib. p. 23. *February* 1797.—"It now appeared" by the "books" that "there were at this time not less than 600 men off *the store*, and *working for themselves* in the colony; forming a vast deduction from the public strength, and adding a great many chances against the safety of private and public property, as well as personal security."

Observations.—Written confirmation of the general proposition so often repeated:—under inspection (viz. such inspection as the nature of the institution admitted of,) bad enough; out of inspection, worse and worse. To "*working for themselves*," might have been added—*or supposed to work.*

No. 5, p. 53. *October* 1797.—"At this time, such" (observes the annalist) "was the increase of crimes, that thrice in this month was the court of criminal judicature assembled. Offences—murder, perjury, forgery, and theft."

No. 6, p. 100. *March* 1798.—"The utmost vigilance was constantly requisite to guard against robbers, both on land and water. It was impossible, in such a community as this, to have a police too strict, or to be sufficiently aware at all times of such a nest of villains. Many examples had been made; but after a few days had elapsed, they were forgotten; and every act of lenity and indulgence was found to be ruinous to the welfare and comfort of the whole. It was to be hoped, however, that the introduction of *more of the better*, and *fewer of the worst sort* of characters, would in *due time* give the balance a favourable turn."

Observations.—This, we see, is the ground, weak as it is, upon which, in the expectation of the late chief magistrate, as in the view of the late governor, all hope of moral improvement rests: the not applying the settlement to the only purpose, with reference to which it has ever been thought well of by anybody. *Quere* as to those "*worst*" characters—if not sent to this improved colony, what else would gentlemen wish to have done with them? If these most intractable of characters can be disposed of with advantage at a less distance and at a less expense, might not the same economy be applied to the less intractable ones?

My language would be somewhat different. Give me the worst in preference: the greater the difficulty, the greater the glory. If there *must* be a New South Wales, let rather the least corrupted go to New South Wales.

No. 7, Ib. p. 105. *April* 1798.—At this time the settlers are still spoken of as being "certainly undeserving of the attention which they met with from the governor."

Observations.—The settlers—not now, as in October 1792, "far too many;" but *the settlers:*—the settlers in general. These settlers, however, were the flower of the flock: the class, in whose instance the possession of permanent property—a sort of landed property, such as the nature of a government completely arbitrary admitted of, together with a portion of appropriate stock—would, according to received theories, afford that sort of security for good behaviour which it is in the power of property in such a state of society to give; and who, as often as the occasion recurs for mentioning them, are notwithstanding, and without any discrimination, mentioned as the worst.

No. 8, Ib. p. 130. *October* 1798.—At this time after speaking of the wilful burning of a building at *Sydney*, used as a *church* and *school* (of which afterwards), "this circumstance," it is observed, "must impress upon the mind of every one who may read" this account, to what a dreadful state of profligacy "the colony had arrived; which, alarming as it was, might have been still worse, had it not been for the *civil police*, which fortunately had been established: for a more wicked, abandoned, and irreligious set of people, had never been brought together in any part of the colony. The hope of their amendment seemed every day to lessen."

Observations.—No travelling without a passport, &c. &c. A sort of system of general imprisonment *within the rules:* a system, which having necessity for its justification, was not the less subject to endless vexations, oppressions and abuses.

No. 10, Ib. p. 210. *May* 1799.—*Backsliders.* At this time mention is made of a convict (Robert Lowe,) one of a number who, for particular instances of good behaviour on shipboard, "had received conditional emancipation, and been allowed to provide for their own maintenance." "*Few* of *these people*, however," it is added, "*were in the end found to merit this* reward *and indulgence*, as their future (*i. e.* subsequent) conduct had proved."

Observations.—Whatever symptoms of previous good dispositions had at any time manifested themselves among the convicts, while subject to such degree of inspection as the economical arrangements afforded, were scarce ever found capable of maintaining themselves against the corruptive effects of the state of society there established: a society composed of such characters, exempted from all restraints.

No. 11, Ib. p. 216. 2*d July* 1799.—Still the older the settlement, the more universal

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the depravity, and the more authentic the evidence of it. Two men and a woman had just been hanged for a murder committed on the body of a kind and generous friend (one of the missionaries,) to save the repayment of a sum of £10 lent by him to his murderers. "The abandoned state in which the settlement was *at this time*," continues the annalist, "cannot be better understood than by a perusal of the following orders:"— The principal mischief mentioned is the "late increased number of nocturnal robberies." Assigned cause—on the part of the *petty constables* and *divisional watchmen*, either extreme negligence or complicity with the malefactors. These subordinate magistrates were the elect among the men of property in the colony.* Remedies proposed — subscription for rewards, and a system of universal vigilance, commensurate to the universal insecurity.

Of these orders, it is stated "that they seemed to have been attended with some effect," because some vagrants were taken up in consequence. The effect, however, seems not to have been very great, since a statement comes immediately after it — that still "alarming depredations were nightly committed upon the live stock of individuals."

No. 12, p. 277. *December* 1779.—The history of this year closes with an ejaculation — "May the annalist, whose business it may be to record in future the transactions of the colony, find a pleasanter field to travel in, where his steps will not be every moment beset with murderers, robbers, and incendiaries!"

No. 13, p. 296. *June* 1800. — Mention having been made of executions, "the number of robbers and sheep-stealers" is mentioned as "still increasing, notwithstanding the late executions." Whereupon comes a question — "Can it be wondered at, that *so much profligacy prevailed in every part of the settlement?*"

Observations. — Here or hereabouts (only four months later) concludes the regular part of the history — the part chronologically arranged. The intelligence by a vessel that quitted the colony at a posterior date (August 1801) consists of nothing but a few scattered articles, mostly without distinction of date.

2. General Depravity *continued—Females.*

No. 1, p. 121. *July* 1798. — "Great complaints were now made of the profligacy of the women, who, probably from having met with more indulgence on account of their sex than their general conduct entitled them to, were grown so idle and insolent, that they were unwilling to do anything but nurse their children, an excuse from labour which very few were without. Were their value to be estimated by the fine children with which they had increased and multiplied the numbers in the settlement, they certainly would have been found to deserve every care and attention as useful members of society, but their vices were too conspicuous and prominent to admit of much palliation."

Observations. — Among these fine children a curious enough topic of inquiry would be, How many legitimate? how many illegitimate? — Another, though not quite so ascertainable, Among the legitimate, how many who had for their fathers the husbands of their mothers?—The managers of the "improved colony," here at home, had they received any such information, my Lord? had they used any endeavour to obtain it? were they afraid of receiving it? or was it beneath their care?†

No. 2, p. 123. *August* 1798. — *Positively* bad in July — another month, and they are become so in the *comparative* degree — "the women, to their disgrace," says their histo-

* II. Collins, pp. 8, 64.

† It cannot have been a secret to them. In the unpublished book, entitled *Panopticon*, printed in 1791, I find in page 141, *on Separation*, &c. the following passage: — "Turn now to New South Wales: 2000 convicts of both sexes, and 160 soldiers, not to speak of officers, jumbled together in one mass, and mingling like beasts: in two years, from 14 marriages, 87 births: the morals of Otaheite introduced into New Holland, by the medium of Old England."

After this I find a reference as follows:—"See Governor Phillips' account of the settlement, 4to. 1791, pp. viii. 67; Mr. White's ditto, 4to. 1790, and extracts of letters and accounts printed and laid before the House of Commons in pursuance of an order of April 8th 1791, p. 3."

November 1802.—I find now, my Lord, I ought to beg pardon of the beasts, since by subsequent accounts there have been times in which, in point of decency, as far as depends upon clothing, the four-footed race have had greatly the advantage.

No. 1, II. Collins, p. 101, March 1798. — "Provisions ... stores — 16 *months* since the last were received. A few slops were served to the male convicts in the beginning of this month, they being *nearly naked*, and the store unable to supply them with covering."

No. 2, Ib. p. 142, January 1799.—"The convicts in general had suffered much through want of clothing and bedding. Indeed, during the late harvest, *several gangs* were seen labouring in the field as *free of clothing of any kind* as the savages of the country. This had made them insolent, and anonymous letters were dropped, in which were threatenings of what would be done at the proper season."

Nakedness, and thence insolence: — and the blame, my Lord — where is it? With those who wore no clothes because they could get none? or with those who left them without clothes?— Suffer till you rot, suffer without complaint—no notice taken: complain — notice taken that you are insolent. Harsh forms excepted, could not your Lordship's recollection furnish you with something like another instance?

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rian at this time, "*were far worse than the men.*"

No. 3, p. 128. *October* 1798.—In speaking of the *seamen* belonging to "some of the whalers that were in the harbour," the *women* of the colony, along with the *spirits* of it, are mentioned as the two temptations so peculiarly calculated "*everywhere*" to lead them astray.

Observations.—Everywhere? Yes, so far as concerns certain vices, such as idleness, prodigality, and improvidence; but not everywhere into crimes. It is only in New South Wales that incontinence exposes a man necessarily and uniformly to the seductions of women "*far worse than the men*"—the men of New South Wales, *i. e.* far worse than a gang of robbers, burglarers, murderers, and incendiaries.

No. 4, p. 138. *Nov.* 1798.—At this time, "the complaints which were daily made of the refractory and disobedient conduct of the convict women rendered it absolutely necessary" (it is said) "that some steps should be instantly taken to make them more clearly understand the nature of their situation, and the duties they were liable to perform:"—*Semper eadem*, worse and worse.

No. 5, p. 218. 3*d July* 1799.—Bad beyond endurance. The opinion above given is not peculiar, either to the late chief magistrate, writing at a distance from the colony, or to his informant on the spot. It is proclaimed on the spot in public orders by the highest authority in the place. "The continual complaints which are made of the conduct of the female convicts require" (says the governor in his order of this day) "the most rigid and determined discipline, with such characters, who, to the disgrace of their sex, are far worse than the men, and are generally found at the bottom of every infamous transaction that is committed in the colony."

No. 6, p. 272. *November* 1799.—Speaking of divine service on Sundays, "The women" (it is said) were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which as women they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others."

No. 7, p. 284. *February* 1800.—This month exhibits a particular example of the effect of such characters, not upon their fellow-convicts only, but also upon the soldiery. "One of these people, a quiet well-disposed young man, fell a victim to an attachment which he had formed with an infamous woman, who, after plundering him of everything valuable that he possessed, turned him out of the house to make room for another. This treatment he could not live under; and placing the muzzle of his gun beneath his chin, he drew the trigger with his foot, and, the contents going through his neck, instantly expired."

No. 8, p. 290. 14*th April* 1800.—It was in order to make an addition to the numbers of this sex, elsewhere the better half of the species, but in this "improved" colony "*far the worst*," that on this day the Speedy whaler is mentioned as arriving from England with 50 "female convicts; and what were much more *welcome* and *profitable*" (observes the historiographer,) "832 casks of salt provisions, which enabled the governor once more to issue a full ration." Profitable? Yes: welcomeness depends on appetites and tastes.

V. General Depravity—*Particular Exemplifications.*

No. 1, p. 4. *October* 1796.—At this time, after speaking of "a murder committed by a man on the person of a woman with whom he cohabited,"—"This" (it is added) "made the fifth circumstance of the kind which had occurred within the last twelve months; and so excessively abandoned were the people, that it was scarce possible to obtain sufficient proof to convict the offenders."

No. 2, p. 196. *January* 1799.—A burglary committed at this time in the house of the acting commissary (the head-keeper of the public stores) is no otherwise worth distinguishing than as it shows the audacity of the delinquent, and the insecurity of those abodes and masses of property which would naturally be the best guarded and most secure.

No. 3, p. 197. *January* 1799.—This next page affords an occurrence, distinguished from the herd of crimes by two circumstances—the magnitude of the property stolen, and the multitude of the delinquents associated. "Before this court" (a court held on this day) "was brought *part* of a *nest of thieves* who had lately stolen property to the amount of several hundred pounds."

Observations.—As in the first part, so in this second, the history of "the improved" and ever-improving colony has, for its chief ingredients, a *pot pourri* of crimes. Giving, if without particular selection, any further additions to the bead-roll of individual offences, I might be accused, though in another sense, of adding piracy to the list. Dropping all such comparative peccadillos as robbery and burglary, I will therefore commit no further trespass on the respectable historian's well-earned rights of authorship than by picking out the cases of incendiarism as I find them rearing their heads above the herd of ordinary crimes.

VI. Depravity—*Particular Exemplifications—Incendiarism.*

No. 1, p. 17. *January* 1797.—"The governor, on his return from his excursion, had

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the mortification of seeing a stack, containing about 800 bushels of wheat, burnt to the ground. This happened at Toongabbe, *near which place the country was everywhere in flames*, and where much wheat belonging to government was stacked. By the accidental vicinity of a jail gang, and assistance bought of them by a universal pardon, other stacks were saved. Although *at this season of the year*," continues our author, "*there were days when, from the extreme heat of the atmosphere, the leaves of many culinary plants growing in the gardens have been reduced to powder*, yet there was some ground for supposing that this accident did not arise from either the heat of the weather, or the fire in the woods. *The grain that was burnt was the property of government, and the destruction of* 800 *bushels of wheat made room for that quantity to be received into the stores from the settlers who had wheat to sell to the commissary:* there were, moreover, at this time, some ill-designing people in the country, who were known not to have much regard for the concerns of the public. An inquiry was set on foot to discover, if possible, the perpetrators of this mischief, but nothing could be made of it."

Thus far our historian. Two other points—the impossibility of obtaining evidence, and the nature of the climate, devoting of itself the fruits of industry to the flames—will be noticed elsewhere.

No. 2, p. 69. *December* 1797.—"Some time in this month, the house of John Mischam, a *settler* in the district of Concord, was attacked by three villains, and set on fire, together with a stack of wheat which he had just completed and secured against the weather. This unfortunate man was indebted about £33, which the contents of his wheat-stack would have paid off; but now, besides being very much beaten, he had the world to begin again, with a load of debt which this untoward accident would much increase. The man himself knew not to what cause to attribute it; and he was as ignorant who were his enemies, for two of them had blackened their faces, and to the third he was a stranger."

No. 3, p. 72. *December* 1797.—"The weather was now become exceeding hot; and as, *at this season of the year, the heat of the sun was so intense that every substance became a combustible, and a single spark, if exposed to the air, in a moment became a flame, much evil was to be dreaded from fire.* On the east side of the town of Sydney, a fire, the effect of intoxication or carelessness, broke out among the convicts' houses, when three of them were quickly destroyed; and, three miles from the town, another house was *burnt by some runaway wretches*, who being displeased with the owner, took this diabolical method of showing it."

No. 4, p. 129. *October* 1798.—"Between seven and eight o'clock in the evening of this day, *the church* on the east side of the cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.

"This was a great loss, for during the working-days of the week, the building was used as *a school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out, and had been rigidly executed, enforcing attendance on divine service; and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week."

No. 5, p. 132. *October* 1798.—"On the evening of the 11th, another fire happened in the town of Sydney, which, but for a great deal of care and activity, might have burnt all the houses on the east side. A row of buildings, which had been lately erected for the nurses and other persons employed about the hospital, was *set on fire* and totally consumed. The flames very nearly reached the boat-yard, in which were many concerns of value."

Observations.—Taken by themselves, the words "was set on fire," suggest the idea of the wilful act of man; but as nothing is said of rewards offered, or other endeavours used, for the discovery of the authors of the mischief, possibly this occurrence was not meant to be understood as belonging to the calendar of crimes. In the next article, however, where the mischief is expressly referred to human will as its cause, the expression is the same—"*was set on fire*,"—and nothing is said about reward, any more than here.

No. 6, p. 197. *January* 1799.—"On the night of the 11th, between the hours of eleven and twelve, the *public gaol* at Sydney, which cost so much labour and expense to erect, was *set on fire*, and soon completely consumed. The building was thatched, and there was not any doubt of its having been done through *design*. But, if this was the fact, it will be read with horror, that at the time there were confined within its walls 20 prisoners, most of whom were loaded with irons, and who with difficulty were snatched from the flames. *Feeling for each other was never imputed to these miscreants, and yet, if several were engaged in the commission of a crime, they have seldom been known to betray their companions in iniquity.*"

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Observations.—What a picture of society! The bond of connexion not sympathy, but antipathy—not sympathy for one another, but antipathy to government, the common enemy.

No. 7, p. 277. *December* 1799.—"About ten o'clock of the night of the same day, the log gaol at Paramatta was wilfully and maliciously set on fire, and totally consumed. The prisoners who were confined were with difficulty snatched from the flames, but so miserably scorched, that one of them died in a few days. This building was a hundred feet in length, remarkably strong, and had been constructed with much labour and expense."

"The rewards which had been formerly held out upon similar occasions, were now offered to any man or woman who would come forward with evidence."

Observations.—Rewards upon rewards, and always with the same success. A feature so remarkable and characteristic may furnish matter for a separate head.

Of all crimes, those excepted which, by striking at the root of government itself, threaten the community with the complicated and unlimitedly extensive miseries of foreign or civil war, *incendiarism* may be set down as the most pernicious. If *wilful inundation* be likewise to be excepted, it is only in the comparatively few particular situations, in which, by the removal of some barrier opposed to the force of waters, the wickedness of a rash hand may plunge an indefinitely extended tract of country in a ruin still more extensive than can be brought upon it by the destructive power of fire.

Wide-spreading as the mischief *of the first order* is but too apt to be, the mischief *of the second order* is sure to be still more so. While individuals in any number may have been involved in the actual past calamity, no individual whatever within the reach of the report can be secure against the terror which the idea of future possible, and to appearance more or less probable, calamities of the like kind, cannot but inspire—*exitium ad paucos metus ad omnes.*

The final causes, or generating motives, capable of giving birth to it, are prodigiously diversified. The specimen your Lordship has just been seeing is not a scanty one. *Enmity, sport, appetite for gain,* may be set down as the most common: and among these, enmity, if not the most frequent, is the most obvious.

Sport, by no means an unexampled one, is to all but the abandoned perpetrator the most horrible and terrific. From the incendiary, whose hand is not put in motion but by enmity, those alone have to fear whose misfortune it is to have excited, or to stand connected in a certain way by vicinity of possession with some one who has excited that passion in his breast. But, from the hand in which, while spreading destruction in this its most diffusive shape, the force of the social and restraining motives has not proved a match for so pigmy a passion as mere sport—and this, too, a motive which requires not, as *enmity* does, any particular relation or incident to bring it into action—from the assaults of such a hand, where is the individual that can call himself safe? Who was safe under Nero? who was safe under Alexander and Thais when in their cups?

Where *appetite for gain* is the generating motive, it can only be in virtue of some special relation, most commonly of the *commercial* kind, the effect of which is to put into the hands of a particular individual a relative *profit* derived from an event, the effect of which is to produce, with reference to the general mass of property, a mere *loss.* Thus in a case but too often exemplified, a man who has insured his house for more than it is worth, may derive a profit from the destruction of it. Thus again, in a case (as per No. 1) which could in no other place have found existence so easily as in New South Wales, a man who has a commodity to sell may, without the intervention of any such source of special relation as a preceding *contract,* derive a gain from the destruction of a stock of the same sort of commodity, whether in the hands of the consumer (as in that case) or in the hands of a rival dealer.

In fact, there is scarce a propensity in human nature, that, by one accident or other, may not, in minds suitably disposed, lead to the commission of this crime. Any object which, by thwarting this or that *propensity,* presents itself as a source of this or that *uneasiness,* or as an obstacle to this or that *pleasure*—every such object, so it be but of a nature easily subjected to the power of the devouring element, is capable of putting in action a generating motive, adequate to the production of this crime. It is in this way, that not *jails* only (as per Nos. 6 and 7,) but *schools* and *churches* (as per No. 4) have found incendiaries in New South Wales.

In that privileged seat of depravity, scarce a heart, that in the vulgar motive of enmity (not to speak of motives of mere casual occurrence) may not at any time experience a generative power, adequate to the production of this crime. In the abstract entity *government,* each subject beholds there, not as elsewhere, a protector, but an enemy: and that ideal enemy he sees embodied and made flesh in the persons of as many individuals as that government has functionaries.

Even in England, cases are not wanting, where a sort of blind malignity—a mixed propensity, compounded of sport, envy, and despair—has not only without any special provocation, but without any assignable advantage in any shape, given birth to this

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crime, in many a deluded breast, which till that fatal moment had known no guile. In times of scarcity, destruction is the grand remedy of an unthinking populace: and on these occasions *fire*, the most commodious of all instruments, is seldom suffered to lie idle. But *scarcity* — simple *scarcity* — is not so frequent in England as *famine* itself not only has hitherto been, but (as your Lordship, I believe, will see) may in reason be ever expected to be in New South Wales.

The speculation is not an idle one, since the greater the number of the motives, each adequate of itself to the production of the offence, the greater at all times the number of chances that any given hand will, by falling within the sphere of action of some one of all these forces, be drawn into the commission of that offence. In New South Wales, incendiarism (as your Lordship sees) is produced by motives which would scarce lead to it anywhere else.

Motives are nothing without *facilities*. Facilities, to a degree unexampled elsewhere, are afforded (your Lordship has seen) by the very nature of the climate; while the means of preventing the mischief, or so much as confining it within any given limits, on a soil where every blade is tinder, are not within the reach of industry or art.

On both accounts — on all accounts — this highest upon the scale of ordinary crimes — this outrage, of which murder forms oftentimes but a part — this cause of ruin, by which the very existence of the whole colony — stock, subsistence, inhabitancy — is, in such a situation, at all times rendered precarious — incendiarism, in a word, has never in any other country been nearly so frequent as it has been, and from the very nature of the case may ever be expected to be, in New South Wales.

At present, it is only in a *moral* point of view that the mischief claims our notice: hereafter, under the head of *Economy*, it may be matter of inquiry, how far, amidst so many ever-probable causes of destruction, of which in such a country so inhabited this is but one, subsistence can be regarded as tolerably secure, and whether it be worth while spending fourscore thousand pounds a-year or so, in combustibles for bonfires at such a distance.

VII. Remedies unavailing — *Spiritual.*

No. 1, p. 3. *October* 1796. — "Directing his attention also toward the morality of the settlement, a point which he could not venture to promise himself that he should ever attain, he [the governor] issued some necessary orders for enforcing attendance on divine service, and had the satisfaction of seeing the Sabbath better observed than it had been for some time past. But there were some who were refractory. A fellow named Caroll, an Irishman, abused and ill-treated a constable who was on his duty ordering the people to church, saying that he would neither obey the clergyman nor the governor: for which, the next day, he was properly punished."

No. 2, p. 51. *September* 1797. — "A church clock having been brought to the settlement in the Reliance when that ship arrived from England, and no building fit for its reception having been since erected, preparations were now making for constructing a tower fit for the purpose; *to which might be added a church*, whenever at a future day the increase of labourers might enable the governor to direct such an edifice to be built."

Observations. — In the first place the *ruffle*: — the shirt to follow it — one time or other, or never, as it might happen. Neither in the literal, nor therefore in the figurative sense, does *edification* appear to have been any great object with governors in the improved colony, any more than with the governed. To speak candidly, why should it have been? Of what use could the externals of religion be, in a community in which the only emotions they could reasonably be expected to give rise to were those of hatred and contempt? Better no church, than to be burnt down; better no service, than to be scoffed at.

No. 3, p. 122, 123. *August* 1798. — "The abandoned and dissipated disposition of most of those who were or had been convicts, so much to be regretted and so often mentioned, was particularly manifest in a shameful abuse of the Sabbath, and a profane ridicule with which everything sacred was treated. A conduct so derogatory to every Christian principle had from time to time been severely reprobated, but it had now arrived at a height that called for the exertion of every advocate for morality to subdue. Observing that instead of employing the Sunday in the performance of those duties for which that day was set apart, it was passed in the indulgence of every abominable act of dissipation, the overseers of the different gangs were strictly ordered to see their men mustered every Sunday morning, and to attend with them at church. The superintendents and constables were to see this order complied with, and that the women (who to their disgrace were far worse than the men) were strictly looked after, and *made* to attend divine service regularly. And as example might do something, the officers were not only to send a certain number of their servants, but they were also called upon, civil and military, to assist in the execution of this order; to the meaning of which the magistrates were required in a particular degree to pay their attention, in *compelling* a due obedience thereto, by preventing the opening of the licensed public-houses during the hours of divine service, as

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well as any irregularity on the day appropriated to the performance thereof."

Observations.—This was "*compelling them to come in*" with a vengeance: but to what use, or with what fruit?—where were the *wedding garments?*

As to the fountains of liquid poison, if they could be sealed up—sealed up to any purpose—at church times, why not at other times, and for ever?—But as to this, see *Drunkenness.*

No. 4, p. 129. 1*st October* 1798.—"Between seven and eight o'clock in the evening of this day, the *church* on the east side of the Cove was discovered to be on fire. Every assistance, as far as numbers could be useful, was given, but ineffectually; for the building being covered with thatch, which was at this time exceedingly dry and combustible, it was completely consumed in an hour.

"This was a great loss; for during the working days of the week, the building was used as a *school*, in which from 150 to 200 children were educated, under the immediate inspection of Mr. Johnson, the clergyman. As it stood entirely alone, and no person was suffered to remain in it after the school hours, there was not any doubt that this atrocious act was the effect of design, and the consequence of the late order which had been given out, and had been rigidly executed, enforcing attendance on divine service, and in the view of rendering, by the destruction of the building, the Sabbath a day of as little decency and sobriety as any other in the week. The perpetrators of this mischief were, however, disappointed in their expectation; for the governor, justly deeming this to have been the motive, and highly irritated at such a shameful act, resolved, if no convenient place could immediately be found for the performance of public worship, that instead of Sunday being employed as each should propose to himself, the whole of the labouring gangs *should be employed on that day in erecting another building for the purpose.* It happened, however, that a large storehouse was just at that time finished; and not being immediately wanted, it was fitted up as a church; and thus not a single Sunday was lost by this wicked design."

Observations.—*On the Sabbath, all work, and no devotion,* cries the accusing angel.—Work? Yes, answers the recording angel; but holy work, work in order to devotion. What a conflict between the letter and the spirit!—*Non in me tantas componere lites.* I leave it to the Saundersons of the age.

No. 5, p. 272. *November* 1799.—"The very little attention which had long been, and continued to be shown to the duties of religion, and the want of that decency and respect which were due to the return of the Sabbath, were now so glaringly conspicuous, that it became *necessary to repeat the orders,* which had indeed often been given upon that subject, and again to call upon every person possessed of authority, to use that authority in *compelling* the due attendance of the convicts at church, and other proper observance of the Sabbath. The women were also directed to be more punctual in their appearance; for these still availed themselves of the indulgence which, as women, they had been treated with, seldom thinking themselves included in the restrictions that were laid upon others."

Observations.—It would be an amusing sight in some respects, if it were not in other respects so melancholy an one, to see the governor thus fighting the demon of irreligion—fighting him with the same straws with which your Lordship will behold him presently fighting the hydra of drunkenness.

No. 6, p. 299. *August* 1800.—"*As if in defiance of the various orders* which had been given to enforce a due attendance on Sunday at divine service, *that day still continued to be marked by a neglect of its sacred duties,* an order was again given out on the 25th, pointing out the duties of the superintendents, constables, and overseers in this particular instance, and assuring them that a farther neglect on their part would be followed by their dismission from their respective situations."

Observations.—At this period, along with the *civil* and *military,* ends the *ecclesiastical* history of the "improved" colony. What effect has since been produced by these fresh orders succeeding to former orders, as often *defied* as issued, may be left to conjecture—to conjecture grounded on unvarying experience, as well as the unchangeable nature of the case.

3. *Per Contra*—PENITENTIARY SYSTEM.

No. 7. *Philadelphia,* 1793. Lownes, p. 89.—"Their [the prisoners'] decorum and attention at times appointed for religious worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it."

VIII. REMEDIES UNAVAILING—*Temporal.*

1. *Punishments and Rewards*—*Evidence unobtainable.*

This head will consist in good measure of recapitulations.

No. 1, p. 4. *October* 1796.—"Five murders in the year," as above, page 220. Strong presumptive proof adduced; but the kind of evidence necessary to establish the offence withheld."

No. 2, p. 69. *December* 1796.—"The house and stock of a poor settler involved in debt, purposely destroyed by fire. Emancipation, with a settlement, offered, and offered in vain, for evidence."

No. 3, p. 110. *May* 1798.—"A fine bull

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calf belonging to an officer was about this time taken from the herd; and though considerable rewards were offered for the discovery of the offender, nothing transpired that could lead to it. This was a serious evil; for the care and attention of years might in one night's time be destroyed by the villany of a few of these lawless people."

No. 4, p. 130. *October* 1798. — Burning of the church and school at Sydney. — Reward of £30, with emancipation if a *non-expiree;* return to England, if an *expiree.* "But it was seen with concern," adds the historian, "that *rewards and punishments alike failed in their effect.*"

No. 5, p. 197. *January* 1799. — Speaking of a number of "*executions and punishments*" that took place at this time, "it might be supposed," observed the historian, "that they would have operated as a check to the commission of offences; but they appeared to be *wholly disregarded.*"

No. 6, p. 268. *October* 1799. — "About this time a young ox was missing from the government stock-yard at Tongabbe, and there was every reason to suppose it had been driven away and slaughtered. . . . In the hope of discovering the offender, a notice was published, holding out a conditional emancipation, and permission to become a settler, to any convict for life, who would come forward with the information necessary to convict the persons concerned in this destructive kind of robbery; and an absolute emancipation, with permission to quit the colony, to any one transported only for a limited time; but nothing was ever adduced that could lead to a discovery."

No. 7, p. 276. *December* 1799. —Burning of the jail at Paramatta, with one of the prisoners in it.—"Rewards such as had formerly been held out."—Same exertions, same success.

No. 8, p. 297. *July* 1800.—"The prisoners who were left for execution at the end of the last month suffered death, two of them at Sydney on the 3d, and the third at Paramatta on the 5th of this month. If examples of this kind could strike terror into the minds of the spectators, they certainly had not lately been without these salutary though dreadful lessons."

The inaccessibility of evidence presents two very material observations.

One is — that in regard to the degree of profligacy prevalent in New South Wales, the criminal calendar, an alleged copy of which is, I observe, extant in print, would, without a proper caution, be apt to give rise to false inductions, presenting the state of society under an aspect by much too favourable. If every individual offence committed, whether *prosecuted* or not, *detected* or not, were *registered* in it, no; — if the number of offences *committed* were in no greater a *ratio* there than in England, to the number of offences *prosecuted* for, no. But in a community, in which the members are, almost to a man, in a league against government — where each criminal has almost as many protectors, if not accomplices, as he has neighbours, the number of crimes *on record,* be it ever so small, affords no indication of any correspondent paucity in the number of crimes *committed.*

Some cases indeed there are, in which, though the criminal remains unprosecuted and even undetected, the existence of the crime will commonly be known, or at least suspected, and in both cases recorded. Murder, at any rate, is of the number. But in the case of a crime of the predatory class, unless accompanied by force to the person or violence to the habitation or its contents, the prevalence of the crime may be continual and universal, without any specific *trace* of it, and therefore without any specific *mention* of it.

The other remark respects the degree of depravity indicated by the universality of this mutual adherence, independently of the actual crimes resulting from it. In the ordinary intercourse of life, fidelity to engagements is a virtue: why? because in the ordinary intercourse of life, among the engagements taken there is not one in a thousand, the execution of which is not beneficial to the community upon the whole. That feature of negative sociableness which disposes men not to obstruct or thwart one another in their enterprises, even this, too, is, as far as it goes, a virtue: why? because in ordinary life, among the enterprises engaged in, great and small, there is not one in a million, the success of which is not beneficial to the community as before. But for the same reason that, in the case of innocent and beneficial engagements and enterprises, fidelity and disposition to mutual adherence are *virtues:* in the case of criminal ones they are *vices.* A sort of honour may be found (according to a proverbial saying) even among *thieves.* Good, as an *observation;* that is, *true* in fact; but bad if the fact be regarded with complacency, and either the thieves themselves, or the society infested by them, are considered as being the better for it. That honour does exist among thieves is not to be doubted; for thieves are a society to one another, and it is only by honour that any society can be kept together. But to regard such honour with complacency, to speak with reprobation of every instance of the absence of it, to speak with eulogium of every instance of the manifestation of it, is indeed a natural enough prejudice, but, in some of its consequences, a very pernicious one. Without honour, society even among thieves could not exist;—true, but the thing to be wished for is, that among thieves, in so

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far as they are thieves, society never should exist. Of thieves, as of other men, the thing to be desired is, that they should observe the laws of honour in some cases, not observe them in others: observe them on the occasion of their honest engagements; not observe them on occasion of their dishonest ones: observe them in their ordinary dealings with other men; not observe them in their dealings with one another in their capacity of thieves. By whatsoever causes produced, infidelity to criminal engagements is *repentance;* and wherein is a man the better for being without repentance? To give birth to such infidelity—to purchase such repentance —is the object of every *reward* offered for he discovery of accomplices in crimes. To censure a man for the acceptance of any such offer—to commend him for the refusal of it—is to employ so much of the force of the popular or moral sanction, in a direction diametrically opposite to that of the action of the political sanction; diametrically opposite to the interest of society—of every society, but that of malefactors.

The application of this argument is susceptible of extensions: for example, subject to certain modifications, to the case of common *informers.* At present, let us content ourselves with applying it to the present case: the more pertinacious and extensive this species of sinister fidelity, the more intense and extensive and incorrigible, surely, is the depravity which it serves to indicate. If, indeed, in the case of this sinister fidelity, it were *sympathy*—sympathy on the part of the individuals as towards one another—that were in any degree the root of it, so far the inference would fail: but over and over again the absence of such sympathy, and that to a degree unexampled elsewhere, is attested as well by particular incidents as by general observations; the true root of this fidelity is—(so it appears throughout)—not in any sympathy on their part for one another, but in their *antipathy* to government—to the common bond by which society is held together.

2. *Police.*

No. 1, p. 8. *November* 1796.—"The useful regulation of numbering the different houses in the town of Sydney, particularly those in the occupation of the convicts, was followed up by another, equally serviceable, which directed the inhabitants of each of the four divisions of the town (for into that number it was portioned off) to meet, and from among themselves elect three of the most decent and respectable characters, who were to be approved by the governor, and were to serve for the ensuing year as *watchmen,* for the purpose of enforcing a proper attention to the good order and tranquillity of their respective divisions. Many of the soldiers being allowed to occupy houses for their families in the vicinity of the barracks, the commanding officer was desired to appoint his own officer for the military division of the town, and to order them to report to him." For the behaviour of these watchmen, see above, p. 219, where they are stated as guilty of "extreme negligence or complicity with the malefactors."

No. 2, p. 26. *March* 1796.—At this time, for any but officers, no travelling without a *passport:* the passport to be *inspected* in each *district* by a *constable:* penalty for being found without one, a month's imprisonment for the first offence, arbitrary punishment in case of repetition. "The frequent and unrestrained passing and repassing of idle and disorderly people from one part of the colony to another, and the mischievous correspondence which was kept up by such means, was productive of great evil. To check this as much as possible, *all persons,* the officers excepted, who were travelling from one district of the settlement to another, were required to furnish themselves with a *passport,* which on a proper application they would obtain without any difficulty. This was *to be shown to and inspected by the constables in each district;* and if found without it, they were to be *imprisoned* during a month for the first offence, and otherwise *punished* if it was repeated. *But the best local arrangements were set at defiance by those hardened vagabonds, who seemed daily to increase in number and in infamy.*" For the effect of this expedient, see the next title, No. 10, *July* 1799.

No. 3, p. 64. *December* 1797.—"The annual election of *constables* took place in this month. These municipal regulations were attended at least with the advantage of introducing something like a system of regularity into the settlement, than which nothing was more likely to check the relaxation which had lately prevailed in it." For the behaviour of these constables, see the next title, No. 7.

No. 4, p. 197. *January* 1799.—"Were it not evident that certain punishment awaited the conviction of offenders, it might be supposed that a relaxation of the civil authority had begotten impunity; but far otherwise was the fact: the police was vigilant, the magistrates active, and the governor ever anxious to support them, and with incessant diligence endeavouring to establish good order and morality in the settlement. *But such was the depravity of these people,* from the habitual practice of vice, that they were become alike fearless of the punishments of this or of the world to come."

3. *Functionaries corrupt—Servants worthless.*

No. 1, p. 60. *November* 1797.—"There

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can scarcely be recorded a stronger instance of human depravity, than what the following circumstance, which happened in this month, exhibits. A convict who had formerly been a school companion with the Reverend Mr. Johnson, had been taken by that gentleman into his service, where he reposed in him the utmost confidence, and treated him with the kindest indulgence. He had not been long in his house before Mr. Johnson was informed that his servant, having taken an impression of the key of his store-room in clay, had procured one that would fit the lock: he scarcely credited the information; but being urged to furnish him with an opportunity, he consented that a constable should be concealed in the house on a Sunday, when all the family, this servant excepted, would be attending divine service. The arrangement succeeded but too well. Concluding that all was safe, he applied his key, and entering the room, was proceeding without any remorse to plunder it of such articles as he wanted, when the constable, seeing his prey within his toils, started from his concealment, and seized him in the act of taking the property.

"Thus was this wretched being, without 'one compunctious visiting of nature,' detected in the act of injuring the man who, in the better day of his prosperity, had been the companion of his youth, and who had stretched out his hand to shelter him in the present hour of adversity."

No. 2, p. 104. *April* 1798. — "The proprietors of this valuable article of stock [horses] were rather unfortunate in the care of it, notwithstanding the high price which it bore. The acting commissary lost a very fine mare, through the stupidity of an Irish servant, who put a short halter round her neck with a running knot by which she was strangled in the night; and information had been received of the death of two foals belonging to government. This accident proceeded from want of proper care in those who were appointed to look after them; but *unfortunately, though they were often changed, the change was never found to be for the better.*"

No. 3, p. 105. *April* 1798. — "They [the settlers] laboured under another evil, which was the effect of an unbounded rage for traffic that pervaded nearly the whole settlement. The delivery of grain into the public storehouses, when opened for that purpose, was so completely monopolized, that the settlers had but few opportunities of getting the full value for their crops. A few words will place this iniquitous combination in its proper light. The settler *found himself thrust out from the granary by a man whose greater opulence created greater influence.* He was then driven by his necessities to dispose of his grain for less than half its value. To whom did he dispose of it? To the very man whose greater opulence enabled him to purchase it, and whose greater influence could get it received into the public store."

Observations.—The English of this seems to be, that those on whom it depended to choose, of whom the governor should make, these his purchases, gave the preference to those who would bribe highest.

No. 4, p. 111. *May* 1798. — "The deceptions and impositions which were daily in practice among the labouring part of the colony, to the great injury of the concerns of government, rendered it highly expedient that the governor, who had those concerns to attend to, should be assisted by trusty and active persons, in every situation where public works might be carrying on. Having made some discoveries of this nature in the department of the sawyers, he issued a public order specifying the hours which should be employed in every branch of public labour. This had by no means been the first attempt to check the impositions of these people; but it was found that *the private concerns of those who should superintend the various public works occupied so much of their time, that their duty was either wholly neglected, or carelessly performed.* This created such a relaxation of discipline, that *a repetition of orders and regulations* was from time to time published, to keep the labouring people constantly in mind that they were the servants of the crown, and remind those who were appointed to look after them, that they had neglected that duty which should ever have been their first and principal consideration."

No. 5, p. 134. *November* 1798. — "An instance of the fatal effects of misguided conduct, and a too late sense of criminality, occurred in the tragical end of Nathaniel Franklyn, the governor's steward. This man, whom he brought from England, had the whole care and management of the governor's domestic concerns entrusted to him. He had been repeatedly cautioned by his master against the many artful and designing acquaintances which he had formed in the town, and was pointedly desired to be aware of not suffering himself to be influenced by their opinions. It was proved that he had not had fortitude enough to withstand their solicitations, but had consented to rob the governor to a very considerable amount, abusing the confidence he had placed in him, and making use of his name in a most iniquitous manner. Of the infamy of his conduct he was at last sensible, and retiring into the shrubbery in the garden of the governor's house, shot himself through the head."

No. 6, p. 138. *December* 1798.—"On the 19th died very suddenly Mr. Stephenson, the storekeeper at Sydney. As his death was not exactly in the common way, so neither had been the latter part of his life—indeed all

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that part of it which he had passed in this country; for, by an upright conduct and a faithful discharge of the duties of the office with which he had been entrusted, he secured to himself the approbation of his superiors while living, and their good name at his death.

"Stephenson *had been emancipated for his orderly behaviour*, and to enable him to execute the office of storekeeper."

Observation. — If I misrecollect not, this is the *single* instance of reformation mentioned by our historian, directly or indirectly, in the compass of the last five years — the period comprised in this his second volume.

No. 7, p. 139. *December* 1798. — "The annual election of constables recurring about this time, the magistrates were desired to be very particular in their selection of the persons returned to them for that purpose, as there was reason to fear, from the frequent escapes of prisoners from the different gaols, that *the constables had been tampered with so shamefully to neglect their duty.*"

No. 8, p. 196. *January* 1799. — "On the night of the 24th, the acting commissary's house was broken into and robbed of articles to a considerable amount. The thieves appeared to have got in at the office window, and loosened the bricks of a partition wall, by which opening they got into the storeroom, and, forcing the locks of the chests and trunks, carried away every thing that they could manage."

"*One evil among others, which attended the frequent arrival of ships* in the port, *was the ready market which these plunderers found for disposing of their stolen goods, the seamen not hesitating to become the purchasers on leaving the place.*"

No. 9, p. 210. *May* 1799. — "At the same court one man, Robert Low, was adjudged to corporal punishment and one year's hard labour, for embezzling some of the live stock of government which had been entrusted to his care. He was a free man, and had been one of the convicts who were with Captain Riow in the Guardian, when her voyage to New South Wales was unfortunately frustrated by her striking upon an island of ice; on account of which, and of their good conduct before and after the accident, directions had been given for their receiving conditional emancipation, and being allowed to provide for their own maintenance. *Few of these people, however, were in the end found to merit this reward and indulgence*, as their future conduct had proved; and this last act of delinquency pointed out the necessity of a free person being sent out from England to superintend the public live stock, with such an allowance as would make him at once careful of his conduct, and faithful in the execution of his trust."

No. 10, p. 219. *July* 1799. — "Still alarming depredations were nightly committed upon the live stock of individuals, and were doubtless effected by those *wandering pests to society, the regulations which had long since been established as a check to such an evil being wholly disregarded.* It was discovered that hogs were stolen, and delivered on the victualling days at the public store, without any inquiry being made as to whose property they were, or by whom delivered, any person's name which they chose to give in being considered by the storekeeper as sufficient to authorise him to receive it, although printed vouchers for the delivery of such pork (and grain likewise) were left at the store for the purpose of being signed by the party offering it. This certainly operated as an encouragement to the commission of these thefts; and it became necessary to order that such persons as attended the receipt of any of these articles at the store should direct whoever delivered them to sign the voucher of the quantity received by him; the governor being determined never to approve of any bill laid before him for that purpose, unless the commissary should produce the voucher properly signed by the person in whose name such bill was made out."

Observations. — By "*the regulations established as a check to those wandering pests to society,*" I understand the regulations requiring *passports*, the measure above spoken of under the head of Police, No. 2.

No. 11, p. 267. *October* 1799. — "A number of the public labouring servants of the crown having lately absconded from their duty, for the purpose either of living by robbery in the woods, or of getting away in some of the ships now about to sail, that none of those concerned in the concealing them might plead ignorance, public notice was given, — 'That any officer or man belonging to the above ships, who should be known to have countenanced or assisted the convicts above alluded to in making their escape, would be taken out of the ship, and punished with the utmost severity of the law; and as the most strict and scrupulous search would take place on board, — for every convict which should be found concealed or suffered to remain on board without regular permission, so many of the ship's company should be taken out and detained for daring to encourage such escape.'

* * * * * *

"On the day this order was issued, the Hillsborough, which was moving out of the Cove, and preparing for sea, was strictly searched; and several convicts being found on board, they were brought on shore, and each received a severe corporal punishment. One of them was excused, on condition of his declaring who the people were that encouraged that concealment, and prepared hiding-

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places for them. He accordingly deposed to *two of the seamen*, who were also brought on shore, *punished*, and afterwards drummed to the wharf, and sent back to their ship. The foregoing order was then published.

"How well it was attended to, and *what effect the punishment of the seamen* and *convicts produced*, were instantly seen. The *Hunter*, preparatory to a voyage to Bengal, where she was to freight with goods for the colony, went out of the harbour. A woman named Ann Holmes being missing, the governor ordered an armed boat from the Reliance to follow the ship, with some of the constables, and search her; with directions, if any person were found on board who had not permission to depart, to bring her into port again. Having found the woman, the ship was brought up the harbour, and secured.

"*Several of her crew having behaved in a most insolent and mutinous manner to the officer of the Reliance*, having armed themselves against the constables with cutlasses, and one of them having presented a musquet to the chief constable, they were secured, ordered to be punished on board their own ships, and afterwards turned on shore. But it was necessary to do something more than this; and a criminal court being assembled for the purpose, the *master of the ship* was brought to trial, charged with aiding and abetting a female convict to make her escape from the colony. As the offence consisted in aiding *a convict*, it was requisite to prove that such was the person found on board his ship; but upon referring to a list of the prisoners who were embarked in the *Royal Admiral*, the ship in which Ann Holmes had been sent out to New South Wales, no specific term of transportation was found annexed to her name. On the question, then, whether the master had aided a convict in making an escape, *he was acquitted, it not being possible by any document to prove that Holmes was at that moment a convict.* But the master was reprehensible in concealing any person whatever in his ship, and ought to have felt the awkwardness of his situation in being brought before a court for the breach of an order expressly issued a short time before, to guard him and others against the offence that he had committed.

"When the Hillsborough was searched, not less than *thirty convicts* were found to have been received on board, against the orders and without the knowledge of the officers, and *secreted by the seamen.* This ship and the Hunter, shortly after these transactions, sailed on their respective voyages."

No. 12, p. 331. *August* 1801. — "It appeared, on examining the registers of the several terms of transportation of the convicts, that the *clerks*, who necessarily had had access to them, had *altered* the *sentences* of about *two hundred prisoners, receiving a gratuity* from each, equal to *ten* or *twelve pounds.* This was a very serious evil; and proper steps to guard against it in future have been taken, both at home and in the colony." — *Quere*, Of how many hundred prisoners could the terms have been shortened by clerks in a *penitentiary-house?*

Observations. — "If the salt hath lost its savour, wherewith shall it be seasoned?"

At a former period, in more instances than one, the terms of the convicts, instead of an abridgment as here, obtained a prolongation. The cause of it was — not any activity on the part of any clerks or other persons in New South Wales, but the negligence (let us hope at least that it was nothing worse than the negligence) of certain persons here at home: ship after ship, convicts were sent out, and no calendar of their terms sent with them.* In England, the presumption is in *favorem libertatis:* at the Antipodes, where justice was turned topsy-turvy, it was naturally enough *in favorem servitutis.*

"We have no proof," says government there to these convicts — "gentlemen who sent you out have given us none — of our having a right to detain you — any of you — so much as a single day: therefore in the first instance we detain you — all of you — for life. To each of you we give an estate for life in banishment and bondage: yes, for life, in the first instance; defeasible indeed as to the bondage, by what lawyers call in England a possibility upon a possibility." Thus it was, that in New South Wales, gentlemen of the highest rank, with the help of gentlemen at home, tacked on, in a wholesale way, to the several legal, so many illegal portions of punishment — bondage and banishment together. In the case at present in question, gentlemen of an inferior rank, instead of tacking on illegal portions of punishment, struck off so many portions of legal punishment: not *in toto* indeed — bondage and banishment together — but bondage alone; in general, at least, leaving the banishment pretty much upon the same footing as they found it. Nor yet were the portions of bondage struck off freely and gratuitously, but for the valuable consideration of £10 or £12 a-head: in other words, part of the bondage was thus *compounded for*, and *commuted* into a fine. The fine, it is true, did not go immediately, nor, I fear, was intended ever to go, if it could safely be prevented from going, into the proper reservoir for fines, the *privy purse:* to which having said *proper*, I am almost ashamed to add — the king's — but in this there seems little to distinguish these from other fines. Gentlemen acted in that behalf as so many self-constituted receivers and surveyors of the green wax: and as other

* I. Collins, p. 74; II. pp. 131, 212, 267.

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receivers and surveyors of that same sort of wax might be expected to do, kept their own secret, kept everything, money and secret together—safe till called for. Neither indeed was the fine thus levied sufficiently public to have any very beneficial effect in the way of *example:* but in the way of *reformation*, and in the character of a remedy applied *pro salute animæ*, the effect of it could hardly have been greater, if levied by the purest ecclesiastical hands, or passed in and stored up in the regular official hive of the receiver and surveyor-general of his majesty's royal green wax as aforesaid.

Question (should Robin Hood ever come to life again) for the lyceum of Robin Hood: Which are most to blame? gentlemen in New South Wales, who without law have shortened servitude? or gentlemen at home, who also without law have lengthened it?

From former titles your Lordship has seen that New South Wales discipline is no source of *reformation* for convicts — that, è contra, it is a source of ulterior *corruption* for convicts: from this title your Lordship has seen, and in a variety of very extensive instances, that it is moreover a source of corruption for *honest men*. For government storekeepers, as per Nos. 3 and 10; superintendent, as per No. 4; stewards, as per No. 5; constables, as per No. 7; seamen in general, as per No. 8; seamen in merchant's service, as per No. 11; clerks in the government office, as per No. 12; soldiers, as per I. Collins, 303, 455, mentioned in my former letter, p. 195, and p. 209.

Thus and thus far in known instances: in another way, and in unknown instances without account, the spread of the corruption may have been in an indefinite degree more extensive. To so many numerous and important classes of his Majesty's subjects as are forced or tempted to make a house-of-call of the "improved colony"—to the king's army —to the king's navy — to seamen in private service, the nest of female convicts constitutes a constantly open school of mischief and depredation; a school in which the arts of theft, robbery, burglary, murder, and incendiarism, are taught by a set of schoolmistresses of the very first order; of schoolmistresses pronounced over and over again, upon the fullest experience, by the highest authorities, and most competent judges, to be "*far worse than the men*," far worse than thieves, robbers, burglars, murderers, and incendiaries.*

IX. Main Cause of Non-Reformation, Drunkenness. — *Universality and Incurableness of it in New South Wales.*†

No. 1, II. Collins, p. 9. *November* 29, 1796. — Speaking of three capital convicts, who had been executed for robbing the public stores, and three others who on conviction of the same offence had received a conditional pardon, "It was much to be lamented," continues the judge advocate, "that these people were not to be deterred by any example from the practice of robbing the public stores, which had of late been more frequent than heretofore, and for which there could not be admitted the shadow of an excuse — as the whole of the inhabitants of every de-

* In the note inserted p. 181 (Letter I.) the following head, intended for the third, was omitted by mistake. It will be found, I believe, not less apposite in this place.

III. *Soldiery corrupted by the Convicts—closer Inspection the only remedy.*

No. 1, p. 59, 60, 61. *March* 1789. "He [Hunt] accused *six other soldiers* of having been concerned with him in the diabolical practice of *robbing the store, for a considerable time past, of liquor and provisions in large quantities* . . . . . *A connexion subsisted between them and some of the worst of the female convicts*, at whose huts, notwithstanding the internal regulations of their quarters, they found means to enjoy their ill-acquired plunder . . . . . On the morning of their execution, one of them declared to the clergyman who attended him, that the *like practices* had been carried on at the *store at Rose Hill* by similar means, and with similar success. He named two soldiers and a convict as the persons concerned."

No. 2, p. 313, 314. *September* 1793. — "The foundation of another barrack for officers was begun in this month. For the privates, one only was yet erected; but this was not attended with any inconvenience, as all those who were not in quarters had built themselves comfortable huts between the town of Sydney and the brick kilns. This indulgence might be attended with some convenience to the soldiers; but it had ever been considered that *soldiers could nowhere be so well regulated as* when living in quarters, where *by frequent inspections* and visitings their characters would be known, and their conduct attended to. In a multiplicity of scattered huts, the eye of vigilance would with difficulty find its object; and the soldier in possession of a habitation of his own might in a course of time think of himself more as an independent citizen, than as a subordinate soldier."

No. 3, p. 425. *February* 1796. — "This intercourse had been strongly prohibited by their officers; but living (as once before mentioned) in huts by themselves, it was carried on without their knowledge. Most of them were now, however, ordered into the barracks; but to give this regulation the full effect, a *high brick wall, or an inclosure of strong paling round the barracks, was requisite: the latter* of these securities *would have been put some time before*, had there not been a want of the labouring hands necessary to prepare and collect the materials."

† A cause perhaps equally efficient is the *promiscuous aggregation;* and this being of the very essence of the colonization system, is still more palpably incurable than the drunkenness. But as this, in the character of a matter of fact, needs no proof, it would have been misplaced, if inserted among the heads under which the evidentiary matter stands arranged.

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scription were at this very time on a full and liberal allowance of provisions and clothing, neither of which were in any scarcity in the settlement. *But the cause was to be found in the too great indulgence in the use of spirituous liquors*, which had obtained among them *for a considerable time past*. The different capital crimes which had lately been brought before the court of criminal judicature, together with the various petty offences that daily came under the cognizance of the magistrates, did not proceed from an insufficiency either of food or clothing, but from an inordinate desire of possessing, by any means whatsoever, those articles with which they might be able to procure spirits — "*that source*," as the governor expressed himself in an order which he published directly after these executions— "*that source of the misfortunes of all those whom the laws of their country* and the justice that was due to others *had launched into eternity, surrounded with the crimes of an ill-spent life*."

No. 2, p. 18. *January* 18, 1797. — Speaking of the persons called *settlers* (the *expirees*, who took to farming on their own account,) and of the measures taken to reduce what was looked upon as excessive in the rate of wages demanded of them by such of their fellows as maintained themselves by serving them as labourers, he goes on and observes, "It must appear from this, that every necessary and useful regulation was suggested, that could promote the convenience and advantage of these people, who being in possession of land that yielded the most ample returns, nothing but the greatest worthlessness on their part could have prevented their getting forward and becoming men of property. That too many of them were of this description, will appear evident from its being notorious that *their crops were no sooner gathered than they were instantly disposed of for spirits*, which they purchased *at the rate of three, nay even of four pounds per gallon*, and of a spirit often lowered one-fourth or more of its strength with water."

No. 3, p. 49. *September* 1797. — On the 20th of this month, "the Deptford, a small brig, arrived from Madras with a cargo of goods upon speculation for the Sydney market. The spirit of trade, which had for sometime obtained in the colony, afforded an opening for adventurers to bring their goods to this settlement. The voyage from India was short and direct; and from the nature of their investments they were always certain of finding a ready sale, and an ample return upon the original invoice. But this intercourse was found to be pregnant with great evil to the colony; for *preferring spirits to any other article that could be introduced from India, the owners never failed to make the rum of that country an essential part of every cargo* which they sent upon speculation; and though every necessary measure was adopted to prevent *all* that arrived from being landed, yet such was the avidity with which it was sought after, that *if not permitted, it was generally got on shore clandestinely, and very few ships carried back any of what they had brought down*. To this source might be traced *all the crimes which disgraced, and all the diseases that injured, the colony*."

No. 4, p. 71. *December* 24, 1797.—A particular anecdote, mentioned by the historiographer under this date, may serve to show the state of public opinion among the convicts, with reference to this most prolific of all vices: — "On the eve of Christmas-day, two young men, settlers on some land midway between Sydney and Paramatta, having been *boasting* of their respective abilities in drinking, regardless of the solemnity of the time, challenged each other to a trial of their skill: on which they were so deliberately bent, that *to prevent their being interrupted*, they retired to the skirts of a neighbouring wood* with a quantity of raw spirits, which they had provided for the purpose. Their abilities, however, were not equal to their boasting; for one of them died upon the spot, and the life of the other was fast ebbing when he was taken up. Had another hour elapsed, he too must have perished like his wretched companion. They had not been able to finish all the pernicious spirit which they had prepared, some of it remaining by them in a case-bottle when they were found."

No. 5, p. 80. *January* 20, 1798. — After having spoken, in p. 35, of a merchant ship called the Sydney Cove, that had been then lately wrecked in her voyage from Bengal to New South Wales on speculation, and of the dispatch of a vessel called the Francis to bring in the crew and what could be saved of the cargo, "On the 20th January 1798," continues our author, "the Francis returned with Captain Hamilton [the captain of the Sydney Cove] from the southward. Previous to his departure for the wreck of his ship, he had informed the governor that she had on board nearly 7000 gallons of spirits, and solicited permission to bring back a part with him in the schooner. The governor, *ever averse to the introduction of spirituous liquors*, would certainly have resisted the application; but it being generally known in the colony that a considerable quantity of this article had been saved from the wreck, and that the island abounded with kangaroos and birds, he conceived these circumstances not only to have conduced to *those desertions and captures of*

* "To prevent their being interrupted," not to prevent its being known, since their supposed abilities in this way were matter of *boast*.

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boats which had been effected, but as likely to prove farther temptations to similar practices. He therefore determined to purchase the rum of Captain Hamilton, and as there was none in store *for the public service, to take it on account of government*. An agreement was accordingly entered into by the commissary, and 3500 gallons were brought round in the Francis."

Observations.—Quere 1*st*, How much more intoxication would be produced by a gallon of spirits taken on account of government, than by ditto of ditto taken on any other account? —*Quere* 2*d*, In what degree or respect is "the source of all the *crimes that disgraced, and all the diseases that injured, the colony*," &c. conducive to the *public service?* — *Quere* 3*d*, If by stolen boats or otherwise, spirits, when landed in Providence Island *by accident*, cannot be prevented from being smuggled into New South Wales, how can they, if landed on ditto, or any nearer and more convenient spot, *by design* and for this very purpose?

No. 6, p. 133. *October* 1798. — The observations made at this time by the governor respecting the state of things in a spot so often mentioned as by far the most fertile of all the settlements, may serve to show of how little avail are the most signal *geographical* advantages, when counteracted by this *moral* obstacle to all industry and all happiness: — "Towards the end of the month, the governor visited the settlers at the Hawkesbury, and while he was there made some useful regulations among the sawyers, *who had fixed their own portion of public labour*. He gave notice that a session should be held quarterly for settling all civil concerns, and made some other local arrangements, which, if attended to, would have conduced essentially to the welfare of the settlers, *whose farms he found promising plenty, but whose houses and persons wore the appearance of poverty and beggary, they converting all the produce of their farms to the unworthy purpose of purchasing a pernicious spirit, that must ever keep them poor*."

No. 7, p. 198. *February* 1799. — "*Notwithstanding the settlement had before it the serious prospect of wanting grain, and the consequent destruction of much useful stock*, it was known that several people had *erected stills* and provided materials for the purpose of distilling spirituous liquors — a pernicious practice, *which had long been forbidden by every officer who had had the direction of the colony*. Former orders on this subject were now repeated, and persons of all descriptions were called upon to use every means in their power, in aid of the civil magistrate, to seize and destroy such stills and materials as they might find.

No. 8, p. 203. *March* 1799. — Speaking of an act of homicide committed in self-defence by a sentinel soldier on the person of a drunken seaman — "This accident," continues the reporter, "*was the effect of intoxication; to which, a few days after, another victim was added*, in the person of a female, who was either the *wife or companion* of Simon Taylor, a man who had been considered as *one of the few industrious settlers* which the colony could boast of. They had both been drinking together to a great excess, and in that state they quarrelled, when the unhappy man, in a fit of madness and desperation, put an untimely end to her existence. He was immediately taken into custody, and reserved for trial.

"*To this pernicious practice of drinking to excess, more of the crimes which disgraced the colony, were to be ascribed, than to any other cause*; and more lives were lost through this than through any other circumstance; for the settlement had ever been free from epidemical or fatal diseases. How much, then, was the importation of spirits to be lamented! *How much was it to be regretted, that it had become the interest of any set of people to vend them!*" [It might have been added (as your Lordship will see) — and in one way or other, of *every* set of people without exception. As to its being *become*, so it always was from the first, and so it must be to the last.]

"*Several robberies*, which at this time had been committed, *were to be imputed to the same source*."

No. 9, p. 205. *April* 1799. — At this time a Spanish ship, having been taken by two whalers, was brought into Port Jackson; and the ship being condemned, part of her cargo was sold by auction. The cargo (our author informs us in a note) "consisted of sugar, flour, and an ardent spirit similar to the *aqua ardente* of the Brazils. This article," he adds, "the governor would *not* allow to be sold *by auction*."

Observations. — *Not by auction*: that the governor would not allow it to be sold *at all* is not said. — *Quere* 1. How much more intoxication would be produced by a gallon of spirits sold by auction, than by ditto of ditto sold by hand? — *Quere* 2. What advantage is gained by keeping down the price "of the source of all diseases and all crimes?"

No. 10, p. 222. *July* 1799. — An observation made at this time serves at once to show the prodigious intensity of two vicious and closely allied propensities — drunkenness and sloth: so mighty the latter, nothing less than the former was able to get the better of it. "Much" (says our historian) "might be expected from the exertions of 355 people; and the greatest advantage would have been derived from their labours, had they been less prone to dissipation and useless traffic — *a traffic which most of them entered into solely with a view to indulging themselves in their favourite propensity of drinking*."

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No. 11, p. 274. *2d December* 1799.—"In the evening . . . . the Plumier, a Spanish ship, anchored in the Cove. She was a prize to three whalers, who had taken her near Cape Corientes, on the coast of Peru. Her cargo consisted chiefly of bad spirits and wine, which, on her being condemned by the court of vice-admiralty as a lawful prize, were removed into the supply, and an order was given out, *strictly forbidding the landing of any spirits*, wine, or even malt liquor, *until a regular permit had been first obtained.* This restriction upon wine and malt liquor was occasioned by spirituous liquors having been landed under that description."

No. 12, p. 275. *16th December.* — "The court of criminal judicature being assembled, two mates of [the ship] Walker were brought before it, and tried for using menaces to a person who had stopt their boat when attempting to land spirits without a permit; but as he had not any special authority for making the seizure, or detaining the boat, they were acquitted."

No. 13, p. 280. *11th January* 1800. — "Arrived the Fhynne, a small snow from Bengal, under Danish colours, which had been chartered *by the officers* of the colony, civil and military*, through the means of an agent whom they had sent thither for that purpose. *She was freighted on their account* with many articles of which they were much in want; and *as more labour could be obtained for spirits* than for any other mode of payment, *an article so essential to the cultivation of their estates was not forgotten.*"†

No. 14, p. 291. *14th April* 1800.—"The quantity of spirits at this time in the colony occasioned *much intoxication and consequent irregularity. The settlers at the river were so lost to their own interests as to neglect sowing of their grounds;* ‡ a circumstance which, but for the timely interference of the governor, would have ended in their ruin. Immediately on hearing of their situation, *he forbade the sending any more spirits to that profligate corner of the colony,*‖ as well as the retailing what had already been sent thither, under pain of the offender's being *prosecuted* for such disobedience of his orders.§

* The governor? Was he too of the number? — If not, did she sail, or was she freighted or unloaded without his knowledge?—*What, then, Sir, do you mean to accuse all these gentlemen* ****?—Not *them*—indeed, my Lord.

† *Dic quibus in terris* . . . . . Where is that colony, which, if it were not poisoned, would be starved?—For the consequence, see the next article.

‡ Drunk, they will not sow—not drunk, they will not reap—(No. 13.)

‖ A prohibition of this sort, if it could be made effectual in one place, why not in another?—if at one time, why not at another?

§ Quere, the penalty, and on what statute an offender would have been to be indicted?

No. 15, p. 299. *August* 9, 1800. — "Toward the latter end of the month, an attempt was made, at 3 o'clock in the afternoon, to land without a permit 1016 gallons of wine and spirits, which were seized at the wharf by the sentinel. If the person who made this attempt had been advised to so incautious and daring a proceeding, it could only have been with a view to try the integrity of the sentinels, or the vigilance of the police."

No. 16, p. 332. *August* 1801. —"Several ships had arrived from India, England, and America, most of which had brought upon speculation, cargoes consisting of *wine, spirits*, tobacco, teas, sugar, hardware, wearing apparel, &c. &c., the sale of *which was, with the governor's approbation, advertised by the commissary, and publicly sold* to all descriptions of people.

It appears that from these ships,

59,294 gallons of spirits	had been imported.
30,896 ditto of wines	
26,974 gallons of spirits	had been landed.*
8,896 ditto of wines	

And

32,320 ditto of spirits	had been sent away.†
22,000 ditto of wines	

Observations.—I have already intimated, my Lord, that I see nothing blameworthy in the conduct maintained in this respect by gentlemen in the colony; nothing which it is in the power of blame to set right; nothing, therefore, for which blame would be of any use. If by any sacrifices or exertions of his own, it would have been in the power of any of them to have subtracted anything considerable from the sum-total of the mischief, then, indeed, ground for blame might not have been altogether wanting—then, indeed, blame itself might not have been altogether without its use. But in that situation it does not appear to me, that from any such *single* exertions, any effectual benefit could have been derived: nor even from any such *joint* exertions as the nature of the case admitted of. *Manufacturing* and *importation* taken together; the exclusion of the means of drunkenness out of the improved colony, presents itself to my view, I must confess, as an achievement, now and for everlasting morally impossible.

In the first place, as to *manufacturing.* — The settlements are spreading themselves over the face of the country: spreading themselves wider and wider every day. It is what

* Landed; viz. with permissions, from which alone the quantity landed could thus have been ascertained.

† Sent away; *i. e.* ordered to be taken away. For the effect of such orders, see No. 3, where it is said, "if not permitted, it was generally got on shore clandestinely, and very few ships carried back *any* of what they had brought down.

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gentlemen wish to see them do: it is matter of triumph that they do so. It is a mark of "*improvement*" — of that feature of improvement which has hitherto been accepted in lieu of every other. They are not only spread, but scattered: they are so already; they will be more and more so every day. Settlers will not take up inferior land on the mere recommendation of its vicinity to already settled land, when superior land is to be had within a certain distance. But the more extended and dispersed the lots of lands are, with their inhabitants, the more incapable they are of being kept under any given degree — under any sufficient degree — of inspection; of being kept under a degree of inspection sufficient for any purpose: and of all purposes for *this*. In respect to every purpose, the deficiency of the system of inspectors — of whatsoever professions, civil and military — under whatsoever titles — is, and in the nature of the case ever must be, a standing topic of complaint. For preventing the erections of stills, orders upon orders have all along been issued. [See No. 7, p. 232.] But the publication of each subsequent order is a pretty sufficient evidence of the inefficacy of all preceding ones.

Next, as to *importation*. — Is it in the nature of things that the coast all round — the coast of a country as large as Europe — should be kept sufficiently guarded for this purpose? Would the whole navy of England be sufficient to the task? Is there so much as a government cock-boat, the expense of which, especially on such a service, is not, and very justly, grudged?

When by accident — by shipwreck (as per No. 5) — a cargo of spirits had been landed on a neighbouring island, preventing the importation of them was found to be impracticable. Would not the difficulty have been at least as great, if *design*, instead of accident, had brought them there? The spot, though *comparatively near*, was *positively* a very *distant* one. In case of design, not any such distant one would be chosen — but whatever spot, in point of vicinity as well as every other circumstance, presented itself as best adapted for the purpose.

So far as to what depends on the situation and distribution of the land: next, as to the permanent interest and consequent natural disposition of its inhabitants. Whatever regulations can ever be made for the preventing the introduction of spirits into the colony — be it by manufacture, be it by importation — there is scarcely a human being in the colony, in or out of power, who has not a personal interest in the inefficacy of them — an interest as strong as it is possible for a man to have in the inefficacy of any such fiscal regulations.

Among the convicts themselves — non-expirees, as well as expirees — servants as well as masters — there is scarcely a man to whom this liquid poison is not dearer than life. Among all classes of persons — convicts — military officers — civil officers — not a master that, so long as any of it is to be had anywhere, or from anybody, can get a servant to work for him on any other terms. In one case, it is true, and that as conceivable a one as any other, this common interest would not exist. Such would be the case if not so much as a single master had so much as a single drop of the poison to give. In this case, their common corrupt interest would be wanting, and the opposite virtuous common interest — the interest which all masters have in the sobriety of their servants — would take its place. But if *one* gives spirits *all* must — or all must see their farms deserted, and their servants gone from theirs to that one. By extraordinary exertions, a reduction in the quantity habitually consumed in the colony might every now and then, I doubt not, be effected; but any such reduction can never be other than temporary: for so many masters as there are (officers as well as others) who see other masters in possession of a greater quantity than they themselves can lay hold of, so many are there who are partakers in this common corrupt interest. Upon the whole, therefore, so long as the quantity of spirits in the colony is short of the full quantity which the convicts altogether are disposed to drink, so long must the virtual auction — the universal *competition* among the purchasers of the article — continue. Those who, at any given period, have the advantage in this respect over their neighbours, will find themselves under the constant necessity of keeping up their stock of it; keeping it up against all competitors, for the purpose of keeping up this advantage; so that the common interest in question — the interest which men of all descriptions have in eluding all such restrictive regulations — is not merely a general and temporary interest, but a universal one, and, humanly speaking, an indefeasible and perpetual one.

With the situation of the governor of New South Wales and his subordinates, contrast, in this respect, that of the governor of a panopticon penitentiary house. Not a drop of forbidden liquor can be either drunk in the house, or so much as introduced into it, without being seen to be so by everybody: by officers — prisoners — visitors through curiosity — visitors upon business: therefore, were transgression ever so advantageous, detection and punishment would be inevitable. But what is still more, transgression would give no advantage. Without work, among those who can work, not so much as a morsel of bread is to be had by anybody (so that here, as elsewhere, as many as choose it may be starved;) and every person, the more he works the

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better he is paid: the amount of his earnings is ascertained, and he receives a quarter of it. Taken in excess, fermented liquors would be directly adverse to profitable economy; taken even in moderation, they would be of no use to it.

X. *Per Contra*—PENITENTIARY SYSTEM,—*General Reformation, as attested in general expressions:*—1. *During Confinement.*

No. 1. Philadelphia; 1793: Lownes, p. 89. — "The order in their" [the prisoners'] "employments, their *demeanour* towards the *officers*, *harmony* amongst each other, and *their decorum and attention* at times appointed for *religious* worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it; and we trust that the impressions received in this secluded state of existence will have a happy influence towards promoting the great object contemplated by the change of the penal code by the legislature of this commonwealth."

No. 2. Philadelphia; 1795: Liancourt, p. 21. — "The appearance of the prisoners has nothing of that insolence or of that dejection which is so striking among our own convicts in Europe. It is cold, respectful, sorrowful, and calm."

No. 3. Philadelphia; 1796. Turnbull, p. 4. — "There was such a spirit of *industry* visible on every side, and such *contentment* pervaded the countenances of all, that it was with difficulty I divested myself of the idea that these men surely were not convicts, but accustomed to labour from their infancy."

No. 4. Ib. p. 27. — "The convicts are called to their meals by the ringing of a bell; we saw the men sit down to their supper, and I do not recollect a scene more interesting. At one view, we beheld about 90 fellow-creatures, formerly lost as it were to their country and the world, now collected in one body, and observing that air of *composure* and *decency to each other*, consequent only from a long and continued practice of moral habits."

No. 5. Ib. p. 46. — "After conversing with her (the *jailoress*) for some time, he (a person before mentioned) inquired of her whether there were no inconveniences attending the institution? With the greatest concern she replied, that there was one which gave her no small degree of uneasiness. That the *debtors* in their apartments, from being able to overlook the yard of the prison, made her fear that their conversing together, swearing, &c. might *corrupt* the *morals* of *her* people. You may think it strange that *debtors should corrupt criminals;* but the case is really so, for there is certainly as much, if not more, morality among the latter, than the former. And so fully convinced were the inspectors of her apprehensions being well founded, that, to remedy the defect, they have since had the prison wall raised."

Observations. — The sex of the keeper, compared with the nature of her office, brings to view the picture of a future golden age as delineated by prophetic poetry: "The wolf shall dwell with the lamb, * * * * and a *young child* shall lead them." The paradox had already received its explanation in the same page.

"I was surprised to find a female in the first appointment, and on inquiry found that her husband was formerly jailor. Discharging the duties of a tender parent towards his daughter, infected with the yellow fever in 1793, he caught the disorder and died, leaving the prisoners to regret the loss of a friend and protector, and the community that of a valuable citizen. In consideration of his faithful performance of the functions of his office, his widow was nominated to succeed him. She is exceedingly attentive and humane."

No. 6, Ib. p. 48.—"Few have been known to stay in the prison the whole of the term to which they were sentenced, the *amendment* and *repentance* of many of them being so visible to the inspectors, as to have had a claim to the governor's clemency."

2. *After Liberation, as per accounts.*

No. 7. Philadelphia; 1793: Lownes, p. 92. — "Out of near 200 persons, who at different times have been recommended to and *pardoned* by the governor, only four have been returned; three from Philadelphia, reconvicted of larceny, and one from a neighbouring county. As several of them thus discharged were old offenders, there was some reason to fear that they would not long behave as honest citizens. But if they have returned to their old courses, they have chosen to run the *risk* of being hanged in other states, rather than encounter the *certainty* of being confined in the penitentiary cells of this. We may therefore conclude, that the plan adopted has had a good effect on these; for it is a fact well known, that many of them were heretofore frequently at the bar of public justice, and had often received the punishment of their crimes under the former laws."

No. 8. Philadelphia; 1796: Turnbull, p. 48. — "Reconvictions are seldom heard of. Of all the convicts *condemned* for these five years past, not above 5 in a 100 have been known to return."

Observations. — Between this article and the last preceding one, your Lordship will have observed the difference. Those of whom but 2 in the 100 proved *backsliders*, were picked men: men picked out as the best, and *pardoned*. Those of whom so many as 5 in the 100 proved backsliders, were the whole number of the "*condemned*" taken together. The *time* which gave these

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gave these 5 in a 100, was moreover nearly as long again as the time which gave not quite so much as the 2 in the 100.

No. 9. New York; 1802: Eddy, p. 33.— "Under the instruction of a prisoner sentenced for life, who was a skilful shoemaker, it was matter of surprise to observe with how much *rapidity* those who were before wholly ignorant of the trade, learned to become *excellent workmen*."

No. 10. Ib. p. 52.—"It is with no small pleasure that the inspectors have observed, that a number of those who have been discharged from the prison, confided to their care, have continued in habits of industry and sobriety, and bid fair to become good members of society."

Observations.—From a literal interpretation of this passage, an inference that might be drawn is, that though the reformed were in a certain number, the unreformed were in a number still greater. But from the general tenor of the publication, and in particular from the two next articles of it as here copied, it will appear evident enough, that the persons here alluded to as reformed were such alone as on that account happened in a particular manner to have attracted the notice of these their former guardians."

No. 11. Ib. p. 85.—In five years ending with 1801, "of 349 prisoners who have been discharged by expiration of sentence and pardon, 29 only, or 1-12th part, have been convicted of second offences; and of these, 16 were foreigners. Of 86 pardoned, 8 have been recommitted for second offences; and of these, 5 were foreigners."

In the recent institution at New York, your Lordship will have observed, the account of backsliders is not as yet quite so favourable as in Philadelphia. The difference may, it should seem, fairly enough be ascribed to a variety of peculiar difficulties which New York has had to struggle with.—Statement given by Mr. Eddy, too long to be inserted here.

In respect of general remarks, circumstances would naturally give a different colour to the representations as between Philadelphia and New York. The *Philadelphia* accounts are, the two latest of them, accounts given by strangers to strangers: the *New York*, by the leading manager to his fellow-countrymen and fellow-townsmen. In this latter case, the main object was to give economical and other arithmetical details: it is a *compte rendu* by a trustee to his principals. As to deportment, &c. of the prisoners, the persons to whom principally the writer was addressing himself were fellow-townsmen, who being on the spot, had eyes of their own to see with. That upon the whole, the chief author saw nothing to deter him from expressing himself satisfied with his work, appears from the concluding paragraph, which is as follows:—

No. 12. Ib. p. 70.—"The New York state-prison will furnish a model for others, which the increase of population and growth of luxury may render necessary in the distant parts of this extensive country*. And whatever may be the future condition of mankind, this institution will reflect lasting honour on the State; become a durable monument of the wisdom, justice, and humanity of its legislators, more glorious than the most splendid achievements of conquerors or kings; and be remembered, when the magnificent structures of folly and pride, with their founders, are alike exterminated and forgotten.

PENITENTIARY SYSTEM CONTINUED:—*Reformation—Particular Exemplifications:—Heroic Humanity.*

No. 1. Philadelphia; 1796: Turnbull, p. 91.—"At the time of the yellow fever in 1793, great difficulty was found in obtaining nurses and attendants for the sick at Bush Hill hospital. Recourse was had to the prison. The request was made, and the apparent danger stated to the convicts. As many offered as were wanted. They continued faithful till the dreadful scene was closed—none of them making a demand for their services till all were discharged.

No. 2. Ib. p. 48.—"Some (on the same occasion) *at the expiration of their terms of confinement*, voluntarily offered themselves . . . . and conducted themselves with so much fidelity and tenderness, as to have had the repeated thanks of the managers."

No. 3. Ib. p. 92.—Another instance of the good conduct of the prisoners during the sickness, happened among the *women*. When request was made of them to give up their *bedsteads* for the use of the sick at the hospital, they *cheerfully offered* even their *bedding*, &c. When a similar request was made to the *debtors*, they *all* refused." Some difference, my Lord, between these women and the women "far worse than the men," in New South Wales—some difference between the men who serve in hospitals at the peril of their lives, and those who make bonfires of hospitals, as well as of prisons with the prisoners in them:—the prisoners—their comrades—their peers—men whom, instead of burning them, they would have been ready to clasp to their bosoms, so it had been to join in mischief.

XI. MAIN CAUSE:—*Sobriety, Strictness.—Universality and good effects of it in the Penitentiary House.*

No. 1. Philadelphia; 1795: Liancourt, p. 19.—"They [the convict prisoners] are ne-

* "Similar prisons are *already* established in *New Jersey* and *Virginia*, and others are *proposed* to be erected in Massachusetts and South Carolina."

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ver on any account permitted the use of fermented liquors, not even of small beer. The prohibition of fermented drink is a standing order, and *most religiously observed.* The liveliness and animation which such liquors might induce in the workmen is only an artificial and momentary vigour; a cause of irritation, heating the blood, and destroying the effect of that temperate regimen which is intended to alter the habit and the constitution."

No. 2. Philadelphia; 1796: Turnbull, p. 26.—" The drink of the criminals is molasses and water; spirituous liquors are forbidden, except for medical purposes prescribed by the attending physician; and the person who sells, or suffers them to be introduced on any other occasion, subjects himself to a penalty of five pounds; if an officer of the prison, to dismission from office. The reason of this rigorous regulation arises, in the first place, from the probability of the abuse which might be made of the practice, were it once introduced: and in the next place, from the conviction of the inspectors, that those liquors act not so powerfully in strengthening a body doomed to more than ordinary toil and labour, as the effects of good wholesome water. That whatever cheerfulness or vigour it may produce in a labourer, it is merely temporary, and like all high stimulatives, its operations are no sooner at an end, than the system is left enervated and fatigued."

No. 3. New York; 1802: Eddy, p. 49.—" *Many* of those who came into the prison *with constitutions greatly impaired* by excessive drinking, debauchery, and vicious habits, after being sometime used to the system of temperance, order, and industry established in the prison, *have become healthy and vigorous.*"

No. 4. Ib. p. 59.—" It is well known that the greater number of crimes originate in the irregular and vicious habits produced by intoxication, and by the idle, low, and dissipated practices encouraged in taverns and tippling-houses. *There are few criminals whose gradual depravation cannot be traced to this source.*"

No. 5. Ib. 59, 60.—" By the city charter, the power of granting licenses is vested in the mayor, who is the sole judge of the propriety of granting them, or of their number. *Thirty shillings* are paid *for each license*, four-fifths of which sum goes into the city treasury, *and the residue to the mayor.* While a revenue is derived to the corporation from these licenses, it is not to be expected that there will be much solicitude to lessen their number, or to examine minutely into the merits of the applicants for them."

Observations. — Can the degree of such solicitude be expected to be much greater where, instead of now and then an odd 5s. to be gained by putting about the cup of intoxication, the greater part or the whole of a man's income—of the income of every man who could do anything towards stopping it, depends upon the circulation of it?

No. 6. Philadelphia; 1799: Liancourt, p. 22.—" The new regimen has . . . . produced a change which is remarkably evident, even in the physician's bill, which formerly amounted to two hundred or three hundred and twenty dollars per quarter, but at present seldom rises above forty. This enormous difference is entirely attributable to the total change of discipline which has taken place. During the former system, the irregular government of the prison was attended with filth and drunkenness; and frequent broils produced diseases, wounds, and bruises of every kind. Under the new order, these causes of evil have ceased — the disorders are confined to colds, or such accidents as are common everywhere. Only two prisoners have deceased within four years, and those of the small pox. Except in cases of contagious maladies, the sick prisoners remain in their room: in such cases, however, they are removed to a separate apartment."

No. 7. Philadelphia; 1796: Turnbull, p. 20. —"A good proof of the cleanliness of the place you have, when I mention from authority, that out of 8060 persons who were confined in the several apartments of the prinso (the debtors' jail included,) from the 28th day of September 1780 to the 5th of the same month in 1790, only twelve died of natural deaths. Since the latter of these periods, the establishment of the new system of discipline has produced much better arrangements, as well in respect to the comfort and health as to the good order and government of the prisoners. This has been evident in several instances. The physician's bill, which formerly amounted to 1280 dollars a-year, seldom exceeds at present 160; and excepting in cases of contagious diseases, not more than two prisoners have died from June 1791 to March 1795, a period of nearly four years. During the fall of 1793, when the yellow fever had extended its fatal ravages over every part of the city and suburbs of Philadelphia, we have from Mr. Carey, in his account of that calamity, that only six persons in the prison were taken sick and sent to the hospital, although the situation of jails, even under the best administration, makes them most frequently liable to the generation of contagious and other diseases. At this time, too, were confined there, by order of the French consul, 106 French soldiers and sailors, besides 100 other prisoners, composed of convicts, vagrants, and criminals committed for trial."

Observations. — From the number of the prisoners that passed through the prison within a given space of time — from the mere number alone, as compared with the number

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of deaths within that time, no very precise induction can be drawn: another point to be known is, what was the average duration of a prisoner's continuance there; if, for example, about half-a-year, viz. 180 days, this would give for the 8000 in ten years, four hundred throughout the whole of every year: upon this number, 12 in the ten years would be 1½ death per annum upon the four hundred.

In this parallel between the two systems, your Lordship may have observed, on the part of the penitentiary system, whole heads wanting, and those very material ones. Under the head of miscellaneous crimes (given as exemplifications of depravity,) a mere blank: under the head of *incendiarism* in particular, a complete one. The case is—that among chronical punishments administering a coercive discipline, it is the peculiar glory of the penal colonization plan, that under it the list of crimes keeps running on, as if no coercion at all were administered; or, if there be any difference, in rather a greater proportion under and with the benefit of this discipline, than without it. In this point, I question whether the world ever saw anything under the name of *punishment* bearing the least resemblance to it. In the very worst ordered gaol, the discipline has at any rate been sufficient to keep the prisoners out of the commission of great crimes: even the hulks have succeeded thus far; even the worst ordered of those archetypes of our hulks that are still to be seen upon the continent—the *galleys*. No forcible robberies are committed—no burglaries—no churches, no hospitals are burnt—even in the galleys.

XII. Central Inspection Principle:

Escapes, for want of it, from the American Prisons, as above.

In a method governed by the consideration of the *ends* of penal justice, the topic of escapes seems to belong to the head of *Incapacitation*—incapacitation for fresh offences. Why? Because under any mode of confinement the effect of which is to prevent offences while it lasts, the effect of an escape is to break the bridle, and leave delinquency to run on again in its old course. Unfortunately, in the penal colony of New South Wales, the place for the topic of *escapes* is not quite so easy to be found. When a man escapes out of it, the scene indeed of his misdeeds is changed; but the multitude of them, being during the continuance of the confinement at the highest pitch, is not in much danger of being increased by the cessation of it. Be this as it may, the confinement of the prisoner being by the supposition a *desirable* object, an escape by which he is liberated from that confinement must, happen where it will—must, were it only for consistency's sake, be ranked among *undesirable* ones. In the case of any other place of legal confinement—in the case of an American penitentiary-house more particularly—this character will be seen to belong to it without dispute.

Good as the penitentiary system has proved itself, wherever it has been established—good in every point of view—good with reference to its *end*—good in *comparison*, with reference to every other system of confinement—I have never given it as altogether perfect: I mean, in any of its existing shapes. I have reserved to myself the submitting to your Lordship, whether from experience as well as by reason, the addition of the *principle of central inspection* may not be regarded as calculated to add to the perfections of it. *Reformation*, *economy*, and *prevention of escapes*—*incapacitation* thereby for fresh offences resulting from escapes—in respect of every one of these objects, I have ventured to state it as eminently serviceable. In respect of *reformation* and *economy*, its presence having never been experienced, the loss, if any, from the want of it, is a point of which, as even the *existence*, however probable, cannot, strictly speaking, be demonstrated, still less can the *amount* be mathematically ascertained. In the article of *escapes*, the amount of the inconvenience from the want of it, and thence of the benefit that would result from the adoption of it, is rather more open to demonstration. A *postulate*, it is true, must even in this case be assumed: viz. that *under the eye of a keeper*, with adequate assistance and means of defence at his elbow, he at the same out of the reach of assault, neither a single unarmed prisoner, nor any number of unarmed prisoners, confined in a room by bars and bolts, will so much as attempt to escape out of it. This being admitted, whatever escapes have been found actually to have taken place from a prison unprovided with this security, may be set down as having the want of it for their cause: and to this same score may be set down, in the account of *economy*, the expense of all such *guards* whose services, in a spot exterior to the prison, have for a given period been kept appropriated to this purpose. After these remarks, whatever considerations are presented to view by the ensuing extracts will, I presume, find their application without much difficulty.

XIII. Inspection *the more perfect — the more perfect the Management; viz. in respect of* Reformation, Incapacitation *as to* Escapes, *and* Economy.

No. 1. Philadelphia; between 1786 and April 1790, under the *ambulatory jail-gang system*, being the first attempt at reformation. Liancourt; 1795: p. 6.—"Criminals loaded with irons, and scattered through the streets and along the roads, presented to the

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public the spectacle of vice, rather than of shame and misery; and the impossibility of watching them properly, facilitated the means of excess, of drunkenness, of pillage, and of *escape.*"

Observations.—Under this system, it may be inferred that escapes actually did take place, with more or less frequency, as under such a system might naturally be expected.

No. 2. Philadelphia; 1786: Turnbull; 1796, p. 14.—"Finding at length that the perseverance of the 'Society for alleviating the miseries of Prisons' bid fair to an extinction of all hopes of their continuing in the same scene of confusion, with one consent they resolved on a *breach of prison.* The attempt was accordingly made on the evening of the day the new order of things had taken place. Fortunately, *few of them escaped:* [Fifteen, as per Liancourt, p. 31.] The jailor was immediately discharged; and since that period [to August 1796,] *almost every project* for the same purpose has failed, either from the want of unanimity of the most evil disposed, the fears of those less so, or the decided disapprobation of the greatest proportion of the prisoners to anything of the kind."

No. 3. Ib. Philadelphia; 1796: Turnbull, p. 19.—"About seven [prisoners] are in a shop, one of whom is appointed by the jailor, whose duty it is strictly to notice all offences, and who, in default of it, is punished according to the rules. For this, however, there is little or no necessity, *as they commonly work under the mutual inspection of each other.** *The keepers constantly parade among the prisoners, in the court-yards and passages.* [viz. per Liancourt, p. 19. Turnkeys, four in number for the whole house.]

Observations.—"*Constantly parade among the prisoners;*" *i. e.* constantly have some of the *prisoners themselves in view:*—"*constantly in the yards and passages;*" *i. e.* constantly have in view *more or less* of the *space* occupied by the prisoners:—constantly; *i. e.* in the day time? But in the night? have they them, *all of them,* and *all night* long, in view? Unquestionably not; if they had, the escapes indicated by the word *almost,* in No. 1, could not, humanly speaking, have taken place.

So far at least as mere inspection is concerned, the work of the *four* keepers would, in a prison upon the central inspection principle, have been performed, and much more effectually and clear of *almosts,* by a single keeper; at the same time that, on my plan, the *economy* of the concern would of itself have afforded, as well as demanded, all night long, the assistance of a number of observing eyes.

No. 4. New York; 1802: Eddy, p. 18.—"*Absolute reliance ought not to be placed on the strength of any prison, let their walls be ever so well constructed. Nothing will probably prevent escape but the unremitting vigilance of the keepers, and a strict watch day and night.*"

No. 5. Ib. p. 19.—"*It would have been more secure, if all the cells and the rooms in the wings adjoining had communicated with one and the same passage; since the same person who watched the wings might at the same time have attended to the cells. It was probably owing to this defect that the escapes were made from the cells, which might have been prevented by a suitable watch.*"

No. 6. Ib. p. 37.—"When day-light disappears, a small lamp is lighted in each room and in the halls; and then the assistant keepers go on watch in the halls and corridors, which command a view through grated doors of each apartment: they walk to and fro during the night, dividing the watch between them."

No. 7. Ib. p. 29.—"*In consequence of some escapes,* the legislature, at the last sessions, authorised the governor, or the person administering the government, to raise a *guard,* to be called 'The State Prison Guard.'

"The *annual expense* of this guard will be about 7000 *dollars* (£1575.) Though the security of the prison is of the highest consequence, since the efficacy of mild punishments depends on their certainty; yet it is probable that an *increase of the number of keepers* [*i. e.* within the prison] *and a more perfect arrangement of them, would have been equally effectual* to that security, and would create not half the additional expense of the present guard."

Observations.—A more perfect arrangement of the apartment, viz. upon the *central inspection* principle, would have been much more effectual, and saved the expense not only of the guard itself, but of the proposed succedaneum to it.

No. 8. Ib. p. 54.—"*About twenty-two of the most obdurate* criminals are kept confined and at work in the separate apartments, and are not suffered to come out, or to have any communication with other prisoners, but *are constantly watched by keepers day and night.*"

Observations.—Without the benefit of the central inspection principle, by which the whole inhabitancy would have been watched by a single keeper without effort, how severe the obligation of such vigilancy, how inordinate the expense!

That these precautions were neither unnecessary, nor so much as sufficient, appears but too plainly from the account of *escapes,* as given by the same intelligent and zealous administrator, whose labours had, under the invincible disadvantage of ill-adapted architecture, been applied to the prevention of them.

* The prisoners under the inspection of each other!—A pretty check that would be in New South Wales!

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TABLE,

Abstracted from Eddy's Account of the *Penitentiary-House* in New York, p. 79; showing (as far as is there exhibited) the Numbers of Prisoners received into the said Prison, and discharged from thence—by *Death*, *Escape*, *Pardon*, and *Expiration* of Sentence—in five years ending 1801: together with the Number *remaining* in Prison at the end of the year last mentioned.

Years.	Received.	Discharged by Death.	Escape.	Pardon.	Expiration.	Remaining, 31st Dec.
1797	121	1	1	—	—	—
1798	144	6	3	—	—	—
1799	121	9	7	—	—	—
1800	150	8	6	—	—	—
1801	157	4	8	—	—	344
Totals....	693	28	25	86	210	344

From this it appears, that in the case of that prison, the number of the prisoners that have *escaped* has, within the five years in question, been almost *equal* to the number who have *died* in it; between 1-3d and 1-4th of the number who have been discharged out of it by *pardon;* between 1-8th and 1-9th of the number discharged by *expiration* of their sentences; and between 1-27th and 1-28th of the whole number *received* into it.

If a man may be allowed to quote himself, a few observations written on the same subject on another occasion* will not here be altogether out of their place. "If in a building on this plan, anything of disorder is supposed, it must be because, though in words the adoption of it may have been admitted, the state of things that would be the necessary rèsult of it is not present to the mind. The disorder supposed, is supposed to be out of sight, which in fact it never could be. From the want of this advantage proceeds that anxiety, the intensity, and at the same time the inefficacy of which is apparent in every page of the *rules and orders* that one sees. *Officers* frequently *to go into the wards*—frequently *to hear complaints*—*master* frequently *to go into every ward, and inspect the persons therein, on a particular day of the week especially*—twice *a-week the matron to inspect every part of the house*—*paupers to be kept clean*—*officers* frequently *to take a view of them*—*paupers to come down into the dining-hall to be mustered and employed*—*doors to be locked that they may not harbour in the wards in the day time;*—*nurse-children* frequently *to be visited*—*once a-month at least;*—*apprentices* frequently *to be visited by the messenger.*—This from the regulations of one of the first-rate poor-houses. All this an attempt—and that probably in a great degree an unavailing one—to effect by great exertions, not a hundredth part of what on the central inspection plan would take place of itself, without a man's stirring from his chair."

Being thus far engaged in self-piracy, I will e'en beg leave of your Lordship to go so much further as to transcribe a passage on the same subject from another work: I mean the book entitled *Panopticon;* containing an exposition of the *central-inspection* principle, with a view to the variety of different purposes to which it presented itself as applicable. The insertion may perhaps be the more pardonable, inasmuch as though the first of the three little volumes, of which the work consists, was in 1791 reprinted, and perhaps sold in Ireland, by order of the government of that day, yet neither that partial re-impression, any more than the original impression, can have *ever* found its way *here* into the shops. At the same time, not to obtrude as necessary, what may perhaps be deemed superfluous, it stands dismissed to the bottom of the page.*

* Papers intituled, *Pauper Management Improved;* first printed in *Young's Annals*, anno 1797 and 1798.

* A collateral advantage, and on the score of frugality a very material one, is that which respects the *number* of the inspectors requisite. If this plan required more than another, the additional number would form an objection which, were the difference to a certain degree considerable, might rise so high as to be conclusive: so far from it, a greater multitude than ever were yet lodged in one house, might be inspected by a single person. For the trouble of inspection is diminished in no less proportion than the strictness of inspection is increased.

Another very important advantage, whatever purposes the plan may be applied to, particularly where it is applied to the severest and most coercive purposes, is, that the *under*-keepers or inspectors, the servants and subordinates of every kind, will be under the same irresistible control with respect to the *head* keeper or inspector, as the prisoners or other persons to be governed are with respect to *them*. On the common plans, what means, what possibility, has the prisoner of appealing to the humanity of the principal for redress against the neglect or oppression of subordinates, in that rigid sphere, but the *few* op-

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What is below being read or not read, let me beg of your Lordship to consider whether, if the too famous prison in *Coldbath Fields* had been upon any such plan, those com-

portunities which, in a crowded prison, the most conscientious keeper *can* afford—but the none at all which many a keeper *thinks* fit to give them? How different would their lot be upon this plan!

In no instance could his subordinates either perform or depart from their duty, but he must know the time and degree and manner of their doing so. It presents an answer, and that a satisfactory one, to one of the most puzzling of political questions, *Quis custodiet ipsos custodes?* and as the fulfilling of his as well as their duty would be rendered so much easier than it can ever have been hitherto, so might and so should any departure from it be punished with the more inflexible severity. It is this circumstance that renders the influence of this plan not less beneficial to what is called *liberty*, than to necessary coercion; not less powerful as a controul upon subordinate power, than as a curb to delinquency; as a shield to innocence, than as a scourge to guilt. Another advantage, still operating to the same ends, is the great load of trouble and disgust which it takes off the shoulders of those occasional inspectors of a higher order, such as *judges* and other *magistrates*, who, called down to this irksome task from the superior ranks of life, cannot but feel a proportionable repugnance to the discharge of it. Think how it is with them upon the present plans, and how it still must be upon the best plans that have been hitherto devised! The cells or apartments, however constructed, must, if there be 900 of them, (as there were to have been upon the penitentiary-house plan) be opened to the visitors one by one. To do their business to any purpose, they must approach near to, and come almost in contact with, each inhabitant, whose situation being watched over according to no other than the loose methods of inspection at present practicable, will on that account require the more minute and troublesome investigation on the part of these occasional superintendents. By this new plan, the disgust is entirely removed, and the trouble of going into such a room as the lodge is no more than the trouble of going into any other.

Were Newgate upon this plan, all Newgate might be inspected by a quarter of an hour's visit to Mr. Ackerman.

Among the other causes of that reluctance, none at present so forcible, none so unhappily well grounded, none which affords so natural an excuse, nor so strong a reason against accepting of any excuse, as the danger of *infection:* a circumstance which carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, involving in one common catastrophe the violator and the upholder of the laws. But in a spot so constructed, and under a course of discipline so insured, how should infection ever arise? or how should it continue? Against every danger of this kind, what private house of the poor—one might almost say, or even of the most opulent—can be equally secure?

Nor is the disagreeableness of the task of superintendence diminished by this plan in a much greater degree than the efficacy of it is increased. On all others, be the superintendent's visit ever so unexpected, and his motions ever so quick, time there must always be for preparations, blinding the real state of things. Out of nine hundred cells, he can visit but one at a time; and, in the meanwhile, the worst of the others may be arranged, and the inhabitants threatened and tutored how to receive him. On this plan, no sooner is the superintendent announced, than the whole scene opens instantaneously to his view.

In mentioning inspectors and superintendents who are such by office, I must not overlook that system of inspection, which, however little heeded, will not be the less useful and efficacious: I mean the part which individuals may be disposed to take in the business, without intending perhaps, or even without thinking of, any other effects of their visits, than the gratification of their own particular curiosity. What the inspector's or keeper's family are with respect to *him*, that and more will these spontaneous visitors be to the superintendent: assistants, deputies in so far as he is faithful, witnesses and judges should he ever be unfaithful to his trust. So as they are but there, what the motives were that drew them thither, is perfectly immaterial: whether the relieving their anxieties by the affecting prospects of their respective friends and relatives thus detained in durance, or merely the satisfying that general curiosity, which an establishment on various accounts so interesting to human feelings, may naturally be expected to excite.

You see I take for granted as a matter of course, that under the necessary regulations for preventing interruption and disturbance, the doors of these establishments will be, as, without very special reasons to the contrary, the doors of all public establishments ought to be, thrown wide open to the body of the curious at large:—the *great open committee* of the tribunal of the world. And who ever objects to such publicity where it is practicable, but those whose motives for objection, afford the strongest reasons for it?

Decomposing the plan, I will now take the liberty of offering a few separate considerations, applicable to the different purposes to which it appears capable of being applied.

A penitentiary-house more particularly is (I am sorry I must correct myself, and say was to have been) what every prison might, and in some degree at least ought to be, designed at once as a place of *safe custody* and a place of *labour*. Every such place must necessarily be, whether designed or not, an *hospital:* a place where sickness will be found at least, whether provision be or be not made for its relief. I will consider this plan in its application to these three distinguishable purposes.

Against *escapes*, and in particular on the part of felons of every description, as well before as after conviction—persons from the desperateness of whose situation attempts to escape are more particularly to be apprehended, it would afford, as I dare say you see already, a degree of security, which perhaps has been scarcely hitherto reached by conception, much less by practice. Overpowering the guard requires an union of hands, and a concert among minds. But what union, or what concert, can there be among persons, no one of whom will have set eyes on any other from the first moment of his entrance? Undermining walls, forcing iron bars, requires commonly a concert, always a length of time exempt from interruption. But who would think of be-

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plaints which have given so much trouble to so many Right Honourable and Honourable Gentlemen could ever have obtruded themselves? — whether the ground for those complaints, such as it was, could ever have had existence? — whether the time of so many public men, whose labour, so much to their regret, was for so many weeks employed upon this irksome service (men worthy of better occupations,) would not have been saved, and the peace of the metropolitan county, together with the situation of its veteran representative, have remained undisturbed?

At different times a sketch on the central-inspection plan has been shewn to jailors: — at no time without producing an exclamation: *Ah! if my jail were like this, my task would be a safe and easy one!*

Different men, different opinions: where is the subject, my Lord, that will not display the difference, especially when motives prompt opinions, and situations convert them into laws?

One man, upon being told of a prison, in which every prisoner was without intermission exposed to an inspecting eye. — "Then they'll all get out," says he. This was one of those men, whom, under the *ancien regime*, gentlemen used to send out to govern kingdoms: accordingly, so long as he reigned, he took effectual care there should be no such jail to get out of in his dominions, spite of everything that could be said to him by subordinates.

Another man, upon seeing the model of a prison round like *Ranelagh*, with this difference, that excepting iron bars and supports as in work-shops, the circumference was all glass, exclaimed immediately — "This prison will be too dark: the keepers in the middle will never be able to see their prisoners." The room it was in, being none of the lightest, ocular demonstration was so far on his side. By I know not by what accident, this *reason* missed being added to the *four reasons for relinquishment*: though, sure enough, there was a time, my Lord, when they lay all together safe and snug in the same place. Alas! my Lord! why were they ever suffered *to get out of it? There*, there indeed, *was* an *escape!*

Behold here again, my Lord, another governor of kingdoms: a task a man seems to be set down to, when he is fit for nothing else. Alas! my Lord! what a truism was the deathbed observation of Chancellor *Oxenstiern* to his son: *Nescis, mi fili, quam parvâ sapientiâ mundus regitur!**

XV. *Fruit of the Penitentiary System, in point of Example as well as Reformation. Decrease of Crimes.*

No. 1. Philadelphia; 1793: Lownes, p. 93. — "Our *streets* now meet with no interruption from those characters that formerly rendered it dangerous to walk out of an evening. Our *roads* in the vicinity of the city, so con-

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ginning a work of hours and days without any tolerable prospect of making so much as the first motion towards it unobserved? Such attempts have been seldom made without the assistance of implements introduced by accomplices from without. But who would expose themselves even to the slightest punishment, or even to the mortification of the disappointment, without so much as a tolerable chance of escaping instantaneous detection? — who would think of bringing in before the keeper's face so much as a small file, or a phial of aquafortis, to a person not prepared to receive any such thing, nor in a condition to make use of it? Upon all plans hitherto pursued, the thickest walls have been found occasionally unavailing: upon this plan, the thinnest would be sufficient; a circumstance which must operate, in a striking degree, towards a diminution of the expense.

In this, as in every other application of the plan, you will find its lenient, not less conspicuous than its coercive tendency; insomuch that if you were to be asked, who had most cause to wish for its adoption, you might find yourself at some loss to determine between the malefactors themselves, and those for whose sake they are consigned to punishment.

* While correcting the press, an incident occurs, from which it should seem that American prisons are not the only places of confinement from which, when correcting eyes are wanting, or off their station, or opposed by walls, a man may find means to make his escape.

Times, December 15, 1802. — "J. Murphy, a convict, who made his escape from the Captivity hulk on Wednesday se'nnight, was taken near Fareham, and lodged in the Bridewell at Gosport. He made his escape from that prison on Wednesday last, by scaling the walls, and got clear off. This is the *fourth* time he has contrived to get out of confinement since he was sentenced to transportation; once from Newgate, from the hulk at Woolwich, from the Captivity at Portsmouth, and from the gaol as above.

Query 1st. How many times in the same period would this ingenious person have effected his escape from a prison on the panopticon plan, out of an apartment exposed night and day to the view of several pairs of eyes, themselves unseen by him, and commanding the whole circle without so much as a change of place?

Query 2d. What obstacle, if any, did noble lords expect would be opposed to any such ingenuity in these four places of confinement, together with the rest of them, 250 or so, throughout England, by the gentleman who, confining his inspection to the hulks, takes four peeps at them in a year, at £87 a peep?

Query 3d. Was it lest noble eyes should be suspected of being constantly asleep, that subordinate eyes were commissioned to be periodically awake?

Query 4th. When, for the single purpose of this *nominal* inspection, Parliament was called upon for a fresh act [42 Geo. III. c. 28, 24*th March* 1802.] might it not have been as well, if some show of obedience had been paid to the two already existing acts, of which, if obeyed, *real* inspection would have been the fruit?

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stantly infested with robbers, are seldom disturbed by those dangerous characters. The few instances that have occurred of the latter, last fall were soon stopped. The perpetrators proved to be *strangers* quartered near the city, on their way to the westward.

"Our *houses, stores, and vessels,* so perpetually disturbed and robbed, no longer experience those alarming evils. *We lie down in peace — we sleep in security.*

"There have been but *two* instances of *burglaries* in this city and county for near *two* years. *Pickpockets,* formerly such pests to society, *are now unknown.* Not one instance has occurred of a person being convicted of this offence for two years past. The number of persons convicted at the several courts has constantly decreased. Thirty and upwards at a session have frequently been added to the criminal list: at this time, when both city and county courts are but a few days distant, there are but *five for trial!* Such have been our measures — such is the state of things — and such the effect. *If any one can assign other causes for them than are here adduced,* they must have other opportunities, other means of information than I am acquainted with."

No. 2. Philadelphia; 1796: Turnbull, p. 91. — "It appears that since the late improvements in the penal code, offences have diminished in a proportion of about one half; and when we recollect that the first table contains the offences of the city and county of Philadelphia only, we may pronounce that they have decreased throughout the whole state nearly *two thirds.* The two periods are equal, and the latter commences from 1791, from the new discipline not having taken place previous to that time. *The most material point gained* with respect to offences, *is the diminution of the most heinous ones,* which are still in a greater proportion. They stand in the table as follows: —

	Under the Old System — in the City & County.	Under the New System — in the whole State.
Burglary,	77	16
Robbery,	39	5
Murder,	9	0
Arson,	0	1
Rape,	0	1
Bigamy,	1	1
Total,	126	24

Observations. — This is a success indeed! a success reported at first after a trial of about two years: confirmed afterwards, as per last accounts, by a further experience of between three and four years. According to the figures, the first-rate crimes reduced to less than a *fifth* of their former number: but even this degree of success, prodigious as it is, falls short of the proportion really obtained. The larger number (the 126) during the prior period is for the capital — Philadelphia — *city and county* alone: — the smaller number (the 24) during the subsequent period — the period of improvement — is for all Pennsylvania — for the whole *state.* But in the jail of this same state, in December 1792,* at a time when, for the whole state, the number of convicts of all sorts was 37, out of these 37, the number for the city and county taken together was but 24; that is, was not quite so much as two thirds of the number for the whole state. Assuming, for supposition's sake, that at the point of time in question (August 25, 1796,) the proportion was still the same, it would follow, that at this latter point of time, out of the 24 for the whole state, no more than 16 were for the city and county: — in this latter period of five years, no more than 16 from the same portion of territory, which in the earlier period of the same length, had furnished convicts of the same description, to the number of 126. If instead of the 126, the number had been 128, the proportion of convicts for the latter period would have been no more than one-eighth of the number for the former — instead of four fifths, the decrease would have amounted to seven eighths.

Permit me on this occasion to add, my Lord, that the difference thus produced — the distinction thus noted — between the number of first-rate crimes and the number of crimes of a less mischievous complexion, is matter of particular satisfaction to me. It gives the *permit* of *experience* to some *speculative* and therefore contraband ideas, consigned long ago to some of the useless papers I have already hinted at. After the diminishing the number of crimes of all sorts and sizes taken together, another distinguishable though concomitant object should be (so it appeared to me,) by a system of due proportions as between punishments and offences, to shove down, as it were, the number of the higher crimes, to convert the higher ones as far as can be done into inferior ones — which inferior ones will then be found such to the mischief of which it is in the power of money

* 3d *December* 1792. Bradford and Lownes, p. 108. — Report of Inspectors of the Prison. By the same report, under the influence of the former system, no more than about one year and a half before, viz. 3d of May 1791, the number was as high as 143.

In 1791, according to the *census* for the United States, the population of the city and county was about one eighth of that of the whole state (as 54,391 to 434,373:) the number of the criminals in the rest of the state being but 13, when that of the city and county was 24, this gives the degree of criminality, in the *country* situation no more than about one sixth of ditto in the *town* ditto.

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to apply a cure. This done, the mischief might, with the help of a few obvious and necessary precautions, be brought within the healing influence of the principle of *insurance:* the principle applied with so much success to the reducing the quantum of suffering from various other causes. Under the head of *Compensation*, I have already troubled your Lordship with a reference to the humble endeavours I had used to throw my mite into this treasury. What I do *not* pretend to say is—that against mischief from *criminality*, any more than against mischief from *fire* or *water*, the door could be altogether shut by this means or any other: but what I fear not to say is—that by this means the mischief from *criminality*—from such crimes as are committed (not to speak of defalcations that might be made from the mass of mischief, by defalcations from the *absolute* number of crimes,) might be made to undergo a degree of reduction, beyond anything which in this country at least has ever yet been looked up to as within the reach of hope. The great point is, to clear the country of those crimes, each instance of which is sufficient to awaken and keep alive, in every breast within a certain circle, the fear of boundless injury to person or property, as well as of destruction to life itself—in comparison of this wide-spreading—this almost universally extending mischief—this fear of boundless injury—the sum of the mischiefs resulting in each instance from losses and other injuries actually sustained by particular individuals would be found relatively inconsiderable. From the number of these superlatively terrific crimes, seven eighths or thereabouts appear, in the instance in question, to have actually been struck off in actual experience. In *this*, or any other country, my Lord, would not the same advantage have been worth purchasing at the same price?

In speaking of the *price*, it would be incorrect, I doubt, to state it as consisting of such exertions, merely as would be requisite for the establishment of a penitentiary-house. Another cause which appears to have contributed, and perhaps in at least an equal degree, to the production of the effect, is—the abolition, next to a total one, of the punishment of *death*. If this be so, then to the account of exertions must be added the effort (no slight one) necessary for giving up the favourite punishment; the punishment so dear to vengeance, hard-heartedness, prejudice, and indolence. On this subject, let the following fact speak in the first place:—

No. 1. Philadelphia; 1786: Liancourt; 1796, p. 38.—"In the year 1786, after the law had been passed which abolished the punishment of death and established the new system, two prisoners arrested for crimes (which according to the ancient jurisprudence were punishable by death, and by the new one only by imprisonment,) preferred to be judged according to the ancient law, rather than be subjected to so long and rigorous a detention; and particularly to that *solitary confinement* which *they started from with horror, though they had never experienced its bitterness.* They were confirmed in this choice *by the hope of a free pardon;* an event which would have restored them to immediate freedom. One of them was not deceived in his expectations; the other suffered death."

Observations.—From this instance, my Lord, may it not be inferred, and may not an instance thus happily apposite be pronounced sufficient of itself to support the inference—that it is not merely in the way of *reformation*, but by its subserviency to the still superior end, *example*, that penitentiary punishment, when well conducted, operates with so palpable an effect in diminution of the multitude of crimes? This same instance, is it not moreover sufficient to support the further inference that death, which *reforms* only by annihilation, which *incapacitates* for crimes only by incapacitating for everything—that death, of which the only recommendation is its supposed superior efficiency in the way of example, yields even in this point to that which is so much superior to it in every other? Turning again to penitentiary punishment, and comparing the exemplification here given of the terror inspired by it, while as yet unexperienced, with the preceding accounts of the deportment and apparent state of mind of the patients under and during the infliction of it, is it not, in both points of view, everything that, for the sake of all parties, one would wish to find it?—does it not, as far as is compatible with the melancholy complexion of the case, exhibit that combination so desirable in every case—the *utile cum dulce?* In prospect terrible, in experience tolerable?

Observe, my Lord, how the *separate* experiences on both sides are confirmed and crowned by this *comparative* experience. Of the *efficiency* of penitentiary punishment, the separate exemplifications have just been presenting themselves to your Lordship's view. Of the *inefficiency* of capital punishments, observations upon observations occur in the annals of the penal colony as recorded by its chief magistrate. At the time of execution,* at the time of dissection,† on a variety of other occasions, such as on all minds might have been expected to be, and on other minds would have been impressive. The insensibility of the survivors to the fate of their comrades and associates is matter of surprise no less than concern to the historian who

* Collins, I. 392. † Ib. 492.

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witnessed it. Confronted together, these contrasted masses of experience, consistent though unconnected, would of themselves afford a proof of no light weight in the scale of prudential conjecture;—would afford that sort and degree of proof, which of itself might appear of sufficient strength to support a correspondent practical inference, with its correspondent *measure*. But what an accession of force is added to these separate experiments, when thus supported by a corroborative of so rare a complexion, as that which is afforded (to use the language of *Lord Bacon*) by this *conjunct* experiment! — the experiment, I mean, in which the two punishments being put in the opposite scales of the same balance, and in the same minds, the punishment of death is found light — the more temperate and regulated mode of punishment outweighing it.

XV. New South Wales — Economy — *Prospects, as per last accounts.*

The subject of *reformation* being thus far considered, *economy* presents the only remaining topic on which any very material lights can be thrown by the ulterior accounts. On this subject, the evidence might be supposed to have been favourable, or at least less unfavourable than before, if so conspicuous a topic were passed over altogether without notice. At the outset my intention was, to have exhibited the passages as before *in terminis*. Frightened, however, at the mass of paper already filled, I give up the greater part of the attempt I had projected on this ground, upon your Lordship's patience, confining myself, for the present at least, to a brief indication of the topics, with references instead of quotations.

Respecting *expense*, past or future—I mean expense to government, the ulterior accounts afford not to my view any indications worth referring exclusively to that head. Two other co-ordinate heads comprise everything that presents itself as worth mentioning: — perpetual probability of sudden destruction — hopelessness of a *non-convict* population — the existence of one, a circumstance that seems all along assumed as a condition *sine qua non* to the ultimate *success* (whatever may be understood by success) of the 14 years' experiment; — assumed by the concurring opinions of the late governor,* and the late chief magistrate,† gentlemen whose opinions on this as on every other head cannot but be as weighty in the scale of *opinion* as any observations of mine, were I to take upon me to present them in that character, would be light. As to *success*, what sort of result is to be understood by that expression is a question, for the answer to which I must beg leave to refer your Lordship to the gentlemen themselves, by whom the word, or what amounts to it, has been employed. What I myself should mean by it, has, I hope, for some time been tolerably clear—accomplishment of the several already enumerated *ends of penal justice*. Be this as it may, in the notice given by this previous announcement, I claim some merit, my Lord; because, if the *results* in question be not worth regarding, the *proof* is still less so: the paper, if thus far read, is thrown by, and so much of your Lordship's time is saved.

Three main causes of famine, and destruction by famine perpetually impending over the ever-so-much "improved" colony: each of them adequate to the effect, according to the time. *Fire — drought — inundation* — for so the case seems to be — there is always either too little *water* or too much. *Fire*, by the malice or phrenzy of the colonists themselves, converted alike by good or bad government into intestine enemies.* Fire, again, by hostility of external enemies, the native savages, ever ready, ever able, to return evil for evil, and for good likewise: † fire, even spontaneous, or in the language of law and religion, *by the visitation of God.*‡ From all these sources together, danger of fire continually brooding over the whole colony, and covering every acre of ground contained in it. Of *inundation*, the danger not quite so universal, being confined to the settlements on George's River and the Hawkesbury,‖ the only spots that present any hope of agricultural advantage.§ On the other hand, what it wants in universality made up in point of certainty, grounded on the topographical features of the country, and by the very latest accounts (dated August 1801,) realized to such a degree, that "*many of the settlers who had farms on the banks had in despair totally abandoned them.*"¶

To these, more awful scourges might be added, *insect vermin*, grubs** and caterpillars;†† plagues as destructive and as frequent as inundation: more and more ineludible than fire. These minor plagues indeed (it will occur) have their equivalent in other countries. True — but then such other countries have unplagued neighbours to draw upon for relief.

As there are years in which the crop does not amount to above a third of what it does in others;‡‡ hence, to guard against dearth, if dearth could be guarded against, would require amply stocked *magazines*: — recep-

* Letter I, p. 180.
† I. Collins p. 235; II. 40, 100, 210.

* II. Collins, 17, 69, 72, 129, 132, 197, 277. Supra, pp. 221-2.
† II. Collins, 15, 31, 32, 33, 40, 56, 68, 204, 209.
‡ Ib. 125, 139, 199, 334. ‖ Ib. 199, 289, 334.
§ Ib. 467, Let. I. p. 178. ¶ II. Collins, 334.
** Ib. 263. †† Ib. 272. ‡‡ Ib. 156.

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tacles in which, over and above the ordinary provision for an ordinary year, more than two-thirds of a year's crop should be kept constantly in store.* The quantity of land cultivated on government account not being yet so much as a tenth part of the whole quantity in culture,† it follows, that to make any tolerable provision against famine, two-thirds of a crop, plus the nine-tenths of a crop, must be bought on government account of the settlers, and a constant overplus to that same amount be kept up by the same means. Here, then, comes a constantly *real* necessity for a prodigious quantity *apparently* superfluous. If the demands of this necessity are yielded to, then comes a proportionally heavy expense, and in the natural course of things, suspicions at home in consequence, reprimands in consequence of these suspicions:—if in consequence of these suspicions and reprimands, or otherwise, the demands of the necessity are not yielded to, then, on the other hand, comes *famine*: — nor that alone, but along with it the insufficient exertions in the way of expense made as heretofore in fighting against the famine. *Beau jeu* in all this (your Lordship may perhaps observe) for opposition: if opposition were to find a glance to bestow upon such trifles, and if half a dozen

* In my uninformed situation, I should have found it a matter of extreme difficulty to make any thing like a tolerably correct calculation of the proportional quantity of provisions requisite to be kept in store. From this difficulty the passages in the first part of Captain Collins' history relieve me in some measure, by fixing the quantity at a two years' stock. In November 1789, this in *fact* was the proportion landed;[a] and as to *opinion* in February 1790, after near two years' experience, the same quantity "*at the least*," was what "the governor, in all his dispatches, had uniformly declared the strong necessity of having in store for some time to come."[b] The date of this opinion (it may be observed) was a time at which the proportion furnished by the colony itself was as yet but very inconsiderable: whereas, by the last accounts, the quantity furnished by the colony within the year appears to have been nearly, if not completely, sufficient for the consumption of the year. To state the question with perfect precision would require more discussion than it were worth; but at any rate it does not appear that the demand for a *security-fund* of this sort is varied in any determinable proportion by the difference respecting the *source* looked to for the supply. At the time of that calculation, the danger to be provided against was the danger of *non-arrivals*: at present, if the *internal* resources of the settlement are to be trusted to, and no more provisions are to be sent thither from *without*, the danger to be provided against is the *internal danger*—the danger composed of *non-production* on the one hand, and *destruction* on the other. The *two years'* provisions spoken of as received in the colony almost two years after the arrival of the first and principal expedition, was, it should be observed, so much over and above whatever stock was at that time expected here at home to have been raised within the colony. The breeding part of the live stock, it may on the other hand be observed, is a resource capable of being added to the part destined for consumption, together with the vegetable stock in store. True: but the live stock itself depends upon the vegetable stock—a bad crop may reduce, and in the same proportion—the men themselves, and the cattle that should feed them.

The natural course of things seems to be—that to save the *expense*, which is the *certain* evil, and that which comes most home to gentlemen here at home—the supply should from henceforward be kept constantly deficient—the calamity, till it happens again, being as usual regarded as impossible. Of the two rival results—on the one hand sufficiency, and thence expense—on the other hand deficiency, and thence famine—that the famine should happen now and then to thin the ranks and lighten the budget, as before, seems at any rate the most convenient result, and so far the most probable. I speak of a *moderate* famine, of the customary established scantling; for if, instead of a fourth or so, the whole population were to be carried off by this or any other cause at once, this would be a sort of innovation: it might possibly make a sensation; and it seems not improbable, that the beginning the business again *de novo*—an operation requiring thought—might find somebody to object to it.

It appears, already, that an apprehended scarcity, such as that which struck off "a third of the ration" in January 1800, had not been understood to warrant the governor in forbearing to lessen the encouragement, the influence of which was all he had to trust to for any increase in the supply. It was but the month before that "they were told [the settlers in a body] *to prepare for the reduction that would certainly take place in the next season*."[c] At this time there was not "more than 'six months'" provisions in the store at full allowance," for in the next month (January 1800,) when the reduction of the ration took place, there was "not more than *five*;"[d] and it was at the very moment of this declaration of scarcity, that an actual defalcation to the amount of 5 per cent.—an unpredicted, previous to the predicted one—was made from the price. Economy appears to have been at this time the *order of the day*, and the *order* must, humanly speaking, have come from gentlemen here at home. Men neither embrace starvation nor any approach to it, unless forced. Is it natural, that when one governor was not contented with less than a two years' stock, another governor should be so well contented with a five months' stock, as to take precisely that time for reducing the only encouragement men had for raising more?

Supplement to Swift's Directions to Servants.—King's Upper Servants—If you want to show what credit you have with your master, and how little you care for gainsayers, take as bad a measure as you can find; bad by repugnance to its pretended object, and doubly bad on account of the expense. Then, to show your economy, instead of giving the measure up, starve it, with the people concerned in it; which saves so much expense.

† I. Collins, p. 334.

[a] I. Collins, 83. [b] Ibid. 97. [c] II. Collins 274, 276. [d] Ib. 283.

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thousand convicts in New South Wales were worth half the pains that have been seen to be taken about half a dozen seditionists, or supposed seditionists, in *Coldbath Fields*. Is the necessary provision made? Outcry against the *expense:* — is it withholden? then in God's own good time comes the *famine*, which, if it were the fashion to look to any such distance, would be a still better thing than the expense.

So again, about the *chandler's shop* already spoken of.* Is the shop sent out thither and opened? — then again comes the expense in that shape. Are the governor's promises on that head kept by gentlemen here, as in my instance they have been keeping their own engagements for these nine years?—then comes the impoverishments of the settlers — the already established reason for keeping up that enormity of price† by which the expense is let in, and the public money let out at another crevice.

It would be something, if at any expense the security could after all be purchased; but as the security increases on one hand, so does the danger on the other. These magazines, are they scattered over the face of the country? — so many stations, so many points to guard against depredation. Are they kept together in one mass?—the more comprehensive, then, the destruction they are exposed to suffer from the devouring flames. Each *Caligula* (in a state of things capable of giving birth to many Caligulas) beholds his wish thus realized: all heads standing upon one neck, and capable of being cut off at one stroke. The supposition, can it, in *that* situation, be deemed a forced one? Even in the mild climate of the mother country, when symptoms of dearth break out, does not the actual *cautery* stand in the *materia medica* of the populace, upon the list of remedies?

But not to speak of a whole stock of settlers, how should so much as a single settler, henceforward at least, ever find his way thither, without insanity on his part, or cruel treachery on the part of those who sent him?‡ No tolerably assured source of supply, either for accustomed comforts, or so much as necessary tools and implements‖ — no tolerably assured *market for produce* when raised.§ The chance depending, in the first place, upon the real wants of government; in the next place, upon the arbitrary will and pleasure of a single person, in a situation capable of making a tyrant out of a *Trajan* or a *Titus*.¶ Storehouses and dwelling-places requiring *repairs every year*,* and even on those terms (such is the law of the climate) not capable of being made to hold together above *ten years*.† *Property* (supposing it acquired)—*property* (not to speak of *person*) incapable of being *removed*, and exposed all the time to *depredation*, as well as to so unprecedented an assemblage of the causes of *destruction* as that referred to as above. No stirring from home without a *special license;* an instrument to be inspected and confirmed every two or three miles, by a man who may not be to be found, or may refuse to look at it,‡— every action of life depending, ultimately or immediately, upon the caprice of a governor, whose caprice is without controul, and whose whole course of government (as I propose to myself the honour of stating to your Lordship ere long) is one uninterrupted, howsoever excuseable, violation of law. While a niche in a rock is to be had in *Nova Zembla* — I beg leave to ask, my Lord—could a man in his senses, supposing him apprised of all these circumstances, regard any otherwise than with abhorrence, the idea of becoming a settler in New South Wales? — in a country peopled almost entirely with characters, the importation of whom into any other "community," though it were in the smallest numbers, is compared by the chief magistrates to the "importation of the plague, or the yellow fever?"‖

After the view already given of the establishment, with reference to the avowed, or at least only avowable, ends of its institution, the sketch likewise given of the *eventual* probability of its destruction would to some eyes be productive, not of regret, but satisfaction: a satisfaction the more complete, the nearer that probability were looked upon as approaching to certainty. The worse the system, the more fortunate that the maintenance of it should be thus hopeless. Once admitted, this hopelessness would ease gentlemen of the responsibility, save them the expense of thought, relieve them from the burthen of reflection and debate. Such, I am inclined to think, would be the effect of the picture on some eyes: — whether your Lordship be or be not of the number, is a point altogether above the reach of the best observations that can possibly be made from so humble an observatory as mine.

XVI. English Hulks *and* "Improved Prisons"—*Topics deferred.*

After so much as has been said of the two specially contrasted systems—the system of *penal colonization* on the one hand, the *penitentiary system* in its most improved realized form, as likewise in its supposed still more

* II. Collins, 97, supra, p. 216.
† 10s. per bushel in December 1799; II. Collins, p. 276: in Norfolk Island, 15s. in January 1799; Ib. 196. ‡ Letter I. p. 182.
‖ II. Collins 92, 105, 114, 205, 269, 274, 305.
§ Ib. 106.
¶ Ib. 126, 269, 274, 276.

* II. Collins 139. ‡ Ib. 26, 295.
† Ib. 135. ‖ Ib. 294.

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improved, though as yet unrealized form, on the other — a supplement of a very moderate length would suffice to complete the review of the several modifications of *chronical* punishment that have as yet been either exemplified or proposed among Britons and men of British race. "Hulks" and "improved prisons" are the heads under one or other of which all the yet remaining matter might be comprised. Principles being already laid down, a small number of additional pages would suffice for the application of them to these two topics. At present, however, considering how large the draughts are which I have been venturing to draw already upon a time so precious as your Lordship's—how complete the uncertainty is to a man at my humble distance, in what proportion, if in any, this or any such draughts from any such quarter will ever be honoured; considering with what imperturbable serenity your Lordship was pleased to view the *outline*, which it has been the business of this and the former letter to fill up — how incapable it was of producing on your Lordship's part any other perceptible effect than a philosophical reflection on the supposed frame of mind by which some other papers that accompanied it were supposed to have been produced; considering how impossible it is for me to know, or so much as to conjecture, whether the lot of convicts, or that portion of public security which depends upon the disposal of them, has ever yet been regarded, or is ever destined to be regarded, as worth a moment's thought, either by your Lordship, or by any of those other exalted persons with whom, when anything is acted, your Lordship acts; considering how much easier, in certain circumstances, repose is than action, silence than justification, or even excuse; taught by a course of nine years' experience, how much superior your Lordship's situation is to every level of practical responsibility — how much inferior mine, and every public subject that has the misfortune to be connected with it, is to every level of effectual and exigible right; recollecting, with an emotion of not altogether uninterested sympathy, the mortification experienced by the well-bred visitor at Mrs. Salmon's circle, whose homage to a well-dressed lady was not sufficient to procure him the return of so much as a nod;—putting all these things together, my Lord, I have determined to consult my own ease at least, whether your Lordship's be or be not connected with it, by reserving to an occasion of future contingency what little may require to be said on those other uninteresting topics above glanced at;—and accordingly for the present, waiting with the necessary resignation that nod, which at one time it was said to be in your Lordship's contemplation to bestow, I have the honour once more to subscribe myself, my Lord, your Lordship's most obedient and humble servant,

JEREMY BENTHAM

Queen's Square Place,
Westminster,
17*th December* 1802.

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A

PLEA FOR THE CONSTITUTION:

SHEWING

THE ENORMITIES COMMITTED,

TO THE OPPRESSION OF

BRITISH SUBJECTS, INNOCENT AS WELL AS GUILTY;

IN BREACH OF

MAGNA CHARTA,
THE PETITION OF RIGHT,
THE HABEAS CORPUS ACT,
AND THE BILL OF RIGHTS.

AS LIKEWISE OF THE

SEVERAL TRANSPORTATION ACTS,

IN AND BY

THE DESIGN, FOUNDATION, AND GOVERNMENT

OF THE

PENAL COLONY OF NEW SOUTH WALES:

INCLUDING

AN INQUIRY INTO THE RIGHT OF THE CROWN TO LEGISLATE WITHOUT PARLIAMENT

IN

TRINIDAD, AND OTHER BRITISH COLONIES.

BY JEREMY BENTHAM, ESQ.
OF LINCOLN'S INN, BARRISTER AT LAW.

LONDON: PRINTED FOR MAWMAN, POULTRY, AND HATCHARD, PICCADILLY: 1803.

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A

PLEA FOR THE CONSTITUTION, &c.

PREFACE.

In two already printed Letters,* having for their direct object, not the *legality*, as here, but the *policy* of the penal colonization system, hints were given respecting the *illegalities*, which are the subject of the present sketch. At the same time, the publication of them in the ordinary mode was forborne, and the circulation of them confined to a few select hands: lest, before there should have been time for the application of a parliamentary remedy, the information thus given, of the illegality of the government there, should, by any of those indirect channels which are not wholly wanting, find its way into the colony, and be followed by any of those disorders, of which, in a community so composed, a state of known anarchy might so naturally be productive.

On that same occasion, mention was made of the case of the Ship *Glatton*, which in September or October had sailed with convicts for New South Wales.† On all former occasions, the vessels in which convicts had been conveyed had been private vessels: the powers given by the various transportation acts not being applicable to king's ships. The person to transport the convicts was to be a private individual:—he was to execute the business by contract; and the service to which the convicts were to be subjected, was to be rendered exclusively either to the person so transporting them, or to some other person or persons, to whom by such contracting transporter the right to such service had been assigned. The *Glatton* is a king's ship: the first, if I mistake not, that had ever been employed in that service. Setting aside the possible fiction of the king's captain having been converted for this purpose into an independent contracting merchant, and the king's governor into a character of similar description, it follows, that, in point of law, neither has the captain during the voyage, nor will the governor have at the conclusion of it, any more power over these exiles, than he would have over any other passenger. The eventual consequences, in respect of *trespass*, *murder*, and so forth, are too complicated, yet at the same time too obvious, to be unfolded here.

This intimation, though from so obscure a quarter, has not been altogether without its fruit. I speak of the transportation facilitating act, the act of 43 Geo. III. c. 15, dated 29th December 1802;‡ a statute which, from

* Letters to Lord Pelham, giving a comparative view of the system of Penal Colonization in New South Wales, and the Home Penitentiary System, &c.

† Letter I. p. 90.

* 43 Geo. III. c. 15, *29th December* 1802.—"An act to facilitate and render more easy the transportation of offenders."

"Whereas it is expedient that provision should be made for transferring the services of offenders transported in his Majesty's ships or vessels, in cases where no contract is entered into, or security given in respect of such transportation, and that his Majesty should therefore be empowered to nominate and appoint persons to have a property in the service of such offenders . . . . be it enacted . . . . . that whenever his Majesty *shall* please to give orders for the transportation, in any ships or vessels belonging to his Majesty, of any offender or offenders, who already have, or hereafter may be sentenced to be, transported to any place or places within his Majesty's dominions beyond the seas, it shall be lawful for his Majesty, by any order under his royal sign manual, to give, if he shall think fit, to any person or persons nominated and appointed for that purpose, in such order, a property in the service of any such offender or offenders, for such term or terms of life or years, or any part thereof respectively, for which such offender or offenders was, or were ordered to be transported, as to his Majesty shall seem fit; and on such nomination and appointment, such offender or offenders may be delivered to the person or persons so nominated and appointed, without any security being required or given for the transportation of such offender or offenders; and every person so nominated and appointed, and his or their assigns, shall have the like property in the service of such offender or offenders, as if such person or persons had contracted and given security to transport such offender or offenders, in the manner required by the act of the twenty-fourth year of his Majesty's reign, intituled, *An act for the effectual transportation of felons and other offen-*

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its almost unexampled brevity, may, without much expense of paper, find a place at the bottom of the page.

The occasion which called forth this manifestation of parliamentary wisdom, was the then and still intended expedition of the Ship *Calcutta*, another king's ship with a similar lading, on a commission of exactly the same nature.

In this act, the powers I had ventured to point out as necessary for the ship that sailed without them, are precisely the powers that have been provided for the ship that is now to sail; and so far all is right. But the ship that sailed without them,—what provision is made in the act for *her* case? None whatever. To the case of all such convicts as may come to be transported, at any time *subsequent* to the 29th of December, the powers *are* capable of being applied: to whatever have been sent off *before* that time, they are *not* applicable. Captain Woodriff, whenever he sails, will sail (I doubt not) in the character of a lawful agent of the crown, provided with lawful powers: but Captain Colnett, (to whom I beg to be understood not to impute the smallest particle of moral blame,) Captain Colnett, for any warrant or protection that has been afforded him by this act, cannot have sailed in any other character than that of a kidnapper. For the exile, confinement, and bondage of Captain Woodriff's cargo of convicts, there will doubtless be a sufficient warrant under this act. For the confinement and bondage of Captain Colnett's cargo, there is no better warrant than there would be for the like coercion, if an equal number of his Majesty's titled subjects, swept out of a birth-day ball-room, were to be the objects of it. Needless *in toto*, or else insufficient by half: such, upon the face of this statement, is the dilemma, out of which, if any gentleman in a long robe, or without a robe, is able to extricate the measure, he will do good service.

The act is simply *enactive*: it is not *declarative*. By being made declarative it might have been made virtually retrospective: but declarative clauses are seldom to be found, without an introductory escort of sometimes real, but more frequently pretended "*doubts*." Here the preceding illegality, of the powers which it was the business of *this* act to confer, was beyond all doubt. In the personal character of the truly honourable servant of the crown, on whose shoulders the mechanism of this disastrous business pressed, I behold, with pleasure, a cause sufficient to account for the exclusion of this, as well as all other disingenuous pretences.

Being without retrospect *in effect*, the act is still more palpably destitute of every operation of that kind, expressed in *direct terms*. The cause of the deficiency is not less perceptible in this case than in the other. The emotion of disgust and alarm, with which an eye of legal and constitutional sensibility could not but have shrunk on this occasion from every such retrospective glance, may be anticipated in some measure from the very title-page of this Essay, and I flatter myself will be pretty distinctly warranted, as well as accounted for, by the tenor of the ensuing pages. So foul, so frightful, was the ulcer, the surgeon durst not look it in the face.

Thus then stands the matter at this hour. The same act by which legality has been given to the expedition *about to sail*, confesses the illegality of that which is already on its way. A deeper probe, a broader plaster, are still necessary. A fresh act must be passed for the ship Glatton, or all pretence of consistency—all regard for official decency—all regard for the forms and fences of the constitution—must be disclaimed.

SECTION I.

SUBJECT MATTER — OBJECT — PLAN.

ON the ground of *natural justice*, as well as *expediency*, a view, nor that a slight or hasty one, has already been given of the penal colony.*

The object of the present essay is of another order: the business of it is to examine the same establishment on the ground of *positive law*: and, in so doing, to state for the consideration of such of my fellow-subjects, if such there be, by whom the constitution under which we drew our breath may be regarded as worth preserving, the injury it has received from the system of misgovernment, by which this nursery of martial law was originally planted, and ever since, during a period of more than fourteen years past, has been conducted and upheld.

On the ground of *policy*, the measure had from the first presented itself to me as more than questionable: years many and many, before the particular inducements, by which I was led to a closer investigation, had so unfortunately occurred to me. On the ground of *legality*, it was not till very lately that so much as a suspicion had come across me.

In a survey taken of the system pursued by the government of the colony when founded, the *laws* passed for the foundation of it would not remain long unnoticed. Astonishment flashed from the first glance. Compared with

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ders, and to authorize the removal of prisoners in certain cases, and for other purposes therein mentioned, or any other law now in force; any thing in the said act, or any other act or acts, to the contrary notwithstanding."

* Letters to Lord Pelham, &c.

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the immensity of the superstructure, the scantiness of the basis exhibited a Colossus mounted upon a straw. Such is the impression, such the discovery, if so it may be termed by anticipation, that gave birth to the scrutiny, of which the following pages are the result.

Legislative power is, and all along has been necessary, for the maintenance of government in the colony of New South Wales. Lawful power of legislation exists not—has not at any time existed—in that colony. Actual power of legislation has at all times been—still continues to be—exercised there. The power thus illegally assumed, was employed, as it had been assumed, for oppressive as well as anti-constitutional purposes. Britons, to whom their country, with the whole world besides, was open by law, have been kept in confinement in that land of exile. Britons, free by law as Britons can be, have been kept in that land of exile in a state of bondage. Such are the propositions which have presented themselves, and which, as such, it will be the main business of the ensuing pages to establish.

Other propositions, though distinct in the expression, and more impressive on the imagination, are not distinct in substance, being virtually included in the foregoing ones. Of what passes there for *justice*, a great, perhaps the greater part, is so much lawless violence: magistrates are malefactors: delinquency, which, in the conduct of the most obnoxious of the governed, is but an occasional incident — is at all times, on the part of the governing class, and especially on the part of the head of that class, the order of the day. To a part, probably the greater part, of the mandates issued, *resistance* is a matter of *right:* homicide, in the endeavour to subdue it, would be—has actually, if the case has occurred, been—as the law stands at present—*murder*. Not a governor, not a magistrate who has ever acted there, that has not exposed himself—that to this hour does not stand exposed—to prosecutions upon prosecutions, to actions upon actions, from which not even the Crown can save him, and of which ruin may be the consequence.

Connected with these propositions of dry *law*, are others in which considerations of a *moral* nature are combined with legal ones. Among the numerous, or rather innumerable manifestations of lawless power, are indeed some—and probably (let candour add) even by far the greater number, which import no moral blame: which, legality apart, import rather praise than blame, so far as praise is due to necessary prudence; and which, in a word, want nothing but *legality* to be *laudable* ones: measures, I mean, taken for the maintenance of authority and necessary subordination; measures calculated for the prevention of mischief in all its various shapes. To this division will be found to belong, more particularly, if not exclusively, the acts of the possessors of power upon the spot: measures recommended at least to them, if not absolutely forced upon them, by their providence, by their experience: measures finding, perhaps in every instance, an *excuse*—in most, if not all instances, a justification (I mean always in a moral point of view) in the mischiefs and dangers of all kinds, with which so unexampled a state of society is encompassed.

To acts of another description no such justification, no justification at all, scarce anything that can be termed so much as an excuse, *in foro morali*, any more than *in foro legali*, will perhaps, if the following view of the matter be correct, be found applicable. Such are the acts by which the punishment has been continued in *fact*, after the term, during which the *law* had authorized the infliction of it, has been at an end. Of all such oppressions, the guilt will be found to belong indisputably, and I hope exclusively, to men in power here at home: *indisputably*, because the exercise of such oppressions was of the essence of the system: necessary to the production of the effect, on which alone so much as a pretence to the praise of *utility* could ever have been grounded: *exclusively*, because the views promoted by such oppressions were the views of the contrivers and arch-upholders of the system, and of them alone, not of those local agents to whom the execution of it was committed; and because it was not natural, that, among professional men, whose profession is naturally understood to exempt them from the investigation of legal niceties, so much as a suspicion should have arisen, that in a system put into their hands by their official superiors, and those composing the supreme executive authority of the state, anything should be wanting to render it conformable either to the spirit or the letter of the law; especially after the application, which on that very occasion had been made to the legislature itself for powers, and powers obtained in consequence.

Once more, it is not in the injury to individuals that we are to look for the main object of the present pages: nor yet in the so much more extensive mischief accruing to the whole body of the community, from the repugnancy of the system to every one of the *ends of penal justice*. These are the topics already handled at least, if not exhausted, elsewhere.* The grievance, by which alone the present representation was called forth, is of a still higher order. It consists of the wound inflicted on the whole body of the people, in what used to be felt to be the tenderest part

* Letters to Lord Pelham, &c.

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—a wound in the vitals of that constitution, which, to our forefathers at least, was an object of such fond attachment, a subject of such unremitting jealousy. Over British subjects, the agents of the crown have exercised legislative power without authority from parliament: they have legislated, not in this or that case only, but in *all* cases: they have exercised an authority as completely autocratical as was ever exercised in Russia: they have maintained a tyranny — not the once-famed argumentative tyranny of forty days, but a too real tyranny of fourteen years: — they have exercised it, not only over this or that degraded class alone, whose ignominy may seem to have separated their lot from the common lot of their fellow-subjects, but over multitudes as free from blemish as themselves: they have exercised it for the purpose of exercising the most glaring of oppressions: for the purpose of inflicting punishment without cause upon those on whom the whole fund of just and legal punishment had already been exhausted.

The conclusions to which the investigation tends being thus announced, the proof will constitute the principal matter of the ensuing pages.

SECTION II.

POWER OF LEGISLATION — ITS NECESSITY IN NEW SOUTH WALES.

THE power of *making regulations* considered as reposed in any other hands than those of the supreme authority of a state, is neither more nor less than *legislative power*, though derived from a superior power of the same kind, and acting under the controul of it.

A general right of legislation is one of those branches of power, the existence of which may be stated, without much fear of contradiction, as necessary in every political community whatsoever, old established or new established: necessary — if, for short spaces of time, not absolutely to the very *being* of the state, yet at all times to the *well-being* of it.

In this country, during the infant and ricketty period of the constitution, the want of so important an article in the list of the powers of government was but too notoriously, as well as frequently and severely felt, in the intervals between parliament and parliament.

In a colony — in a new formed community — much more in the colony in question, at the time in question — a colony not yet formed, but to be formed — the existence of such a power may be pronounced altogether necessary to the very *existence* of the infant establishment.

The creation of such powers is a security that surely was never before omitted in the case of any thing that was ever called a *colony*: never, even in the case of a colony established on the natural and ordinary footing, by a population composed principally or exclusively of free settlers, impelled thither by the principle of social industry. How much more urgent the demand for it in the case of a population composed as in New South Wales! composed almost exclusively of such disturbed, discordant, dissocial elements!

It is a security never yet omitted in colonies the *least remote*, in local situation, from the mother country. How much more indispensable in a population to be transported from Britain to the very furthest point of the globe, at a distance more than twice as great as that of the eastern dependencies, and more than four times as great as that of the western!*

In the act of founding *a colony*, as distinguished from an originally independent state, two parties are necessarily concerned: — the destined *inhabitants* of the new territory, and the legal *founders* of it, their accustomed rulers, from whom they derive permission to quit their mother country, and assistance towards establishing themselves in this new one. But, on the part of the *founders*, as thus distinguished, unless it be the accidental contribution of pecuniary assistance, what was ever understood to be done by the *founding of a colony*, but the conferring, on persons of certain descriptions, settled or about to settle in the territory of the colony, the necessary assortment of the *powers of government?* an assortment of which the *power of legislation* has never been suspected, I believe, of being anything less than a necessary ingredient.

From one source or another — from within or from without — from intrinsic authority or from extrinsic — who ever heard of the *foundation* of a state, dependent or independent, without a power in it *to make laws?* No, surely: *Lucina sine concubitu* is not a more palpable absurdity, than the idea of founding a colony without providing any legislative powers for it.

Supposing the whole mass of law existing in the mother country to be transplanted in one lot into the colony, *judicial power* might, in this case, be of itself admitted to be sufficient: admitting always (what never can be admitted) that no need will ever occur for the imposition of fresh obligations. But even in the *oldest* established communities, that need is occurring every day; and surely the more *novel* the situation, the more urgent and frequent must be the demand for fresh obligations. I say *obligations*: for it is by such

* Speaking of *space*, I measure it here by *time*: for, of the two quantities, time — quantity of it necessary for intercourse — is the only one of intrinsic importance with a view to practice.

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instruments, and such alone, that any provision can be made for the unforeseeable and infinitely diversifiable train of *exigencies*, of which such a situation could not but, in point of reason, be expected to be productive.

One omission it is time I should confess, in the observation of which the reader may not improbably have been beforehand with me. In speaking of the *existence* of such a power as necessary, I ought to have added, or the *belief* of its existence. To many an eye the distinction might appear an useless refinement; for without a *really existing* power of legislation, how in the nature of things, it may be asked, can the *belief* of it be produced? or, if it could be, who would set about producing it, and to what end or use? — questions pertinent enough these, but not unanswerable. The reader will soon judge.

The expedition was fitted out. It left the seat and source of regular government.* A governor went out with it: and with him went not out the smallest particle of legislative power, derived from the only source of legislative power — from the source, from whence other and inferior powers (*judicial* I mean) that at the same time were sent with him, had been derived — in a word, from *parliament*.

An act, brought in by administration, had been obtained of parliament to serve as a sanction for the measure: "An act to enable his Majesty to establish a court of criminal judicature on the eastern coast of New South Wales, and the parts adjacent."† Such is the title of the act: — no such power as that of legislation is in the title; no such power is in the act. What powers, then, *are* there in the act? Powers for creating courts of judicature, and no other. This was the professed business of the act: this the only business: the very title says as much. Powers are given by it — to do what? to create any *new rights*? to impose any *new obligations*? No such thing. Nothing but to punish "*outrages* and *misbehaviours*."‡ And what outrages and misbehaviours? "*Such*" (and such alone) "*as if committed in this realm would be . . . treason or misprision thereof, felony or misdemeanour.*" — "Whereas," says the preamble, "it may be found necessary that a *colony* and *civil government* should be established in the place." "*To establish* a civil government — that a "civil government *should be established*"‖ — at least, established somehow and by somebody — was the professed object of the act. "*A civil government to be established*," and no power of making *general* regulations — no power of making laws — no, not in any case whatever — is comprised in it! If, without parliament, power could be found for legislating in all other cases, and for all other purposes, why not for the establishment of this, or any other court of justice?

Under this provision of the law, an ordinance, suppose of the *prohibitive* class, is issued by the governor in New South Wales. In the words above quoted, we have a standard for the validity of such ordinance. The *act prohibited* by it, is it of the number of those acts which would be "*outrages*" or "*misbehaviours*" if committed "*in this realm*?"§ If not, then is the ordinance by which it thus stands prohibited, illegal and void: void beyond dispute, unless the power of making laws binding "*in this realm*" belongs to the governor of New South Wales, or some other person or persons legislating in New South Wales.

SECTION III

LEGISLATION — HOW FAR LAWFUL IN NEW SOUTH WALES.

ALL this while, from the time of the first landing of the first expedition to the time at which the historiographer of the colony took his leave of it, that is, from January 1788 to September 1796, ordinances were issued by the governor, and, as it should seem, by his sole authority. *Instructions* were also from time to time received by him from his superiors here at home, and ordinances issued in consequence of, and therefore (it may be presumed) in conformity to, these instructions. And these ordinances are not, like the king's proclamations in Great Britain, mere acts of monition, or other acts, grounded on *pre-existing* acts of the legislature, but *original* acts of legislation, forbidding, and thereby converting into "*misbehaviours*," a variety of acts, such as, if performed "*in this realm*," whether in England or in Scotland, would not have been "*misbehaviours*," would not have belonged to the class of "*misdemeanours*," or to any of those higher classes of delinquency (*treason*, *misprision* thereof, or *felony*,") specified as such in the act.

This assumption of power, how shall it be accounted for? On the part of the governor,

* 13th May 1787. Collins, I. 3.

† 27 Geo. III. c. 2.

‡ *Outrages?* What a word for the basis of a system of legislation! "*Outrages*," too, as well as "*misbehaviours*:" when the import, vague and declamatory as it is, it is at any rate included in *misbehaviours*.

‖ "And whereas it may be found necessary, that a colony and a civil government should be established.... And that a court of criminal jurisdiction should also be established..... with authority to proceed in a more summary way than is used within this realm, according to the known and established laws thereof....." Section 1. Preamble.

§ "*This realm?*" What realm? Of the impropriety and inexplicability of the term, notice will be taken a few pages farther on.

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there can be little difficulty. Whatsoever were given to him for law, by his superiors at the Council Board, or the Secretary of State's office, would naturally enough, one may almost say unavoidably, be taken by this *sea captain* for law. By this sea captain: for such has been the profession and rank of every gentleman who has ever as yet been invested with this important office.

On the part of these authorities at home, some imagination or other must necessarily have been entertained about the *right*—either that a right to confer on the governor this power was actually existing in the authority thus assuming and exercising the power; or at least that of the existence of such right a *belief* would be entertained by the several parties interested—a belief which, though it were ill-grounded and erroneous, would, so long as it continued to be entertained by all parties, have the same effect as if well-grounded and correct.

On the first supposition, they went to work *bona fide*, believing that to be *legal* which was determined to be *done*. In the other case, conscious of the illegality of the course they were pursuing, they determined to persevere in it notwithstanding; perpetual fraud trusting for its success to perpetual and universal ignorance.

Of two such opposite conceptions, which, then, is it that, on the face of it, carries the strongest probability of having been entertained?

The first hardly, for what is there that can be found to countenance it? Legislative power exercised by an officer of the crown, for such a course of years, without authority from parliament! On what possible ground could any conception of the legality of such a system be seriously entertained?

I will make the best case for it in my power: I will ransack imagination for possible grounds.

That the supposition was, *in the whole extent of it*, without foundation, would indeed be evidently untrue. That there was and is a considerable stock of lawful power in the colony to work with, is palpable enough. That that power was of a nature to serve as a *succedaneum, so far as it went*, to a regular and expressly-constituted legislative power, must also be admitted: manifest enough, I accordingly admit, it is, that a power of legislating over certain *persons*, and in certain *cases*, was *virtually* among the contents of it. But, in addition to all *such* persons and cases, legislation (so the fact is) has been exercised there (as indeed it required to be exercised there) over abundance of *other* persons, and in abundance of *other* cases.

To show this, I will in the first place exhibit a short survey of the stock of the colony, live and dead, persons and things, thrown into classes with this view. It will then be easy enough, and with a degree of accuracy sufficient for the purpose, to go over them, and say of each, this stands subjected, or this does not stand subjected, to the powers of all-embracing legislation, that have been exercised in New South Wales, by the sole authority of the king's governor of New South Wales.

In the course of a period of nine years and a half, comprised in the history given of the colony by its chief magistrate, the inhabitants, considered in respect of their subjection to any ordinances of the governor (or of any other person or persons pretending to the exercise of legislative authority there) may be distinguished into the classes following:—

1. *Officers and privates*, in the *land* branch of the king's military service, subject to orders, as such, under the *mutiny act*.
2. Officers and privates in the *naval* branch of the king's military service, subject to orders, as such, under the *articles of war*.
3. Persons in the king's service in a *civil* capacity: as such, not subject either to the articles of war or the mutiny act: such as *chaplains, surgeons, superintendents, &c.*
4. Commanders and crews of *British vessels* in *private* service.
5. Commanders and crews of *foreign vessels*.
6. Convicts still in a state of legal bondage: the terms of punishment specified in their respective sentences being as yet unexpired. For distinction's sake, they may be called *convicts non-emancipated de jure*, or, still more shortly, *non-expirees*. The reason of this distinction, and the nomenclature founded on it, will appear immediately.
7. *Wives, children*, and other relatives, if any, of non-expirees.
8. *Expirees*. Convicts emancipated *de jure: de jure*, in contradistinction to *de facto*. The distinction is altogether a necessary one: for, in point of fact, one of the characteristic features of the establishment, and crimes of its foundation, was—that those who by law ought without exception to have been *free*, were, and were to be, in a multitude of instances, *retained in bondage*.
9. Wives and children, and other relatives, of *expirees*.
10. *Unblemished* settlers: that is, all settlers not belonging to classes 6, 7, or 8, or any of the preceding classes. In this instance, and for this purpose, the term *free settlers* (the term employed elsewhere) would not serve: since, if law had been the standard, classes 7, 8, and 9 would have been as *free* as these.

1, 2. With reference to the two first of these ten classes (*Army* and *Navy*,) the right

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of legislation may pass without dispute. Conditions might be stated as requisite — limitations might be suggested — but the discussion would be superfluous. For the purpose of the argument, I suppose and admit proper measures to have been taken, and by the proper authority, to subject all persons of these two descriptions to the authority of the governor in that behalf.

3. Over persons of the third class *(servants of the crown* in *civil* capacities,) supposing power to be given to the governor to dismiss them from their respective situations, this power operates of course as a means of *influence*, tending to produce a disposition towards a general submission to his will, howsoever signified. Setting aside this means of influence, their condition is noways different from that of class 10th, *unblemished* settlers.

4. With reference to commanders and crews of *British vessels*, the right might also be admitted, for the purpose of the argument: — though, in this instance, it appears liable to particular objections, which will be mentioned presently.

5. With respect to the commanders and crews of *foreign vessels*, the right shall, for the same purpose, pass unquestioned.

6. With respect to *non-expirees* (convicts still in a state of *legal* bondage,) their legal subjection to the governor, and consequently to all such orders as a master in England has it in his power to issue to an indented servant, may be pronounced unimpeachable: I mean, supposing the course directed in that behalf by the act to have been pursued;* and supposing the *civil* branches of the law of *England*, or of *Scotland*, or of both together, or of *Great Britain*, to have grown up in New South Wales, like so many weeds, without having been ever planted there: of which more will be said presently. That the spirit of the old transportation system, which it is the professed object of the act to continue, cannot have been conformed to, I have already had occasion to explain in another place.† But, if the words of the act have been pursued, in the manner that will also be stated, I see nothing to hinder the power of the governor from having been rendered unimpeachable in relation to this class: always assuming the fulfilment of the unfulfillable conditions just mentioned.

7. 8. 9. 10. Over *expirees* convicts, their wives, children, and other dependent relatives — over the *wives*, *children*, and other dependent *relatives*, even of *convicts* themselves in a state of legal bondage — over unblemished *settlers* — the governor neither had, nor could have had, nor without fresh authority from parliament can ever have, any more power (I speak always of legal power) than I have.

Over any *stores* entrusted to his care, the governor, in his quality of agent to his Majesty, the legal proprietor of those stores, will have had the same legal power as any other proprietor anywhere. These stores being in a large proportion among the necessaries of life, from the proprietorship of these means of subsistence, must of course result a proportionable degree of influence.

But influence — *natural influence* — is one thing: *legal power* is another. To the production of an effect by influence, *consent* is necessary: special consent *precedently* given to each act, by the production of which the influence has fulfilled its purpose: to the production of the same effect by power, no such consent is necessary. Were the governor to say to this or to that man, being a man not in bondage to him — "Do such or such a piece of work, or you shall have no bread served out to you to-day — an order *thus sanctioned* may be admitted to be legal, though without any previous authority given by parliament for the issuing of it. But if, addressing himself to the same man, and speaking of the same piece of work, the governor were in like manner to say (as he has so often done) — "Do this, or you shall be whipped" — here would be an ordinance illegal and void.

The same thing may be said of any *general* ordinance addressed to *all* persons without distinction, with or without any *special* sanction annexed to it, and whatever may have been the utility or even necessity of it: so far as the persons bound, or otherwise affected by it in point of interest, are persons subjected by any *special legal commission*, to orders from the governor, so far, and as to those persons, it is good and legal. Beyond this, and as to all other persons, the same ordinance is illegal and void. As for example: orders that no persons shall, for such a time, go beyond such and such bounds:‡ orders that no man shall build, or begin to build, a vessel of a size beyond such and such dimensions.§

I take for granted (always for the purpose of the argument,) that whatever power of legislation *could* be given by the crown, to anybody, to be exercised in this colony, *has* all along been given by the crown to the several successive governors. All this not-

* 24 Geo. III. sess. 2, c. 56, § 1, 13: which it may have been till of late; but could not have been in the case of the ship Glatton, which, having sailed in September or October, with about 400 convicts, without any legal power for consigning them to bondage, gave occasion for the act passed in December, by which legality has been intended to be given (and therefore I conclude, without having yet seen it, was given) to the transaction, by an *ex post facto* law. [Not given: see *Preface.*]

† Letters to Lord Pelham. Letter I. p. 190.

‡ II. Collins, 286, 295.

§ I. Collins, 159, 488; II. 53.

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withstanding—all this being admitted—what I maintain is, that, no such authority having been given to the crown, in the only act in question,* by the legislature, it was no more in the power of the crown to confer any such power of legislation (except the limited, and not so denominated, but only *virtual* powers of legislation above excepted) on the governor, or any other person or persons, than in mine.

SECTION IV.

AMERICAN, &c. LEGISLATION NO PRECEDENT FOR NEW SOUTH WALES.

THE nature of the case not furnishing any just grounds for the assumption of any such legislative power as has actually been exercised, I come now — (still acting under the difficulty already recognised) — I come now to fish out imaginary and possibly pretended grounds, at a venture.

True it is accordingly, certainly in general, and for aught I know, without exception — and as such I shall admit it — that among all the *charters* in which the governments in the several existing English, British, or quondam British colonies in America (West Indies included,) have respectively had their rise, there is not one, for the granting of which any powers, previously or subsequently to the concession of it, had been obtained from parliament.

Still more clearly true it is, that even in the instance of *Georgia* (the last colony established before the revolt, established at so late a period as in the sixth year of the reign of the late King,) when an act of parliament was passed, having for the object of one of its clauses† (as declared in what may be called *a clause* in its longwinded title,) the "enabling his Majesty . . . . to pay . . . . ten thousand pounds to the trustees for establishing the colony of *Georgia*," no powers are given to the crown, any more than in any preceding or subsequent act, for the purpose of legalizing such powers, as the crown must then recently have been creating for the government of that colony.

But, *since that period*, and *before* that of the passing of the act for the foundation of the colony of New South Wales,‡ this practice of organizing governments for British dependencies, in territories out of Great Britain, by the sole power of the crown, may, I think, be said to have been relinquished, and virtually acknowledged to be indefensible. I mean, by the precedent, set by the act commonly called the "*Quebec Act*,"‖ in which, whatever was done in the way of establishing subordinate powers of *legislation*, was in *that* case, as well as in the case of *judicature*, done either by parliament itself, or by authority therein given to the crown by Parliament.

Even in the same reign which thus gave birth to the latest instance of unparliamentary colonization, and not more than seven years after that instance, the legality of the practice appears to have been regarded as matter of *doubt*, at least by parliament itself.§ At this time, among the American colonies, there were many, that under the powers of legislation granted to them from the crown, had passed acts of their own, *restricting personal liberty* (as in New South Wales)—restricting the right of departure out of the precincts of their respective territories. Acts made (says the preamble of the British act) "for the preventing the carrying off, from the said colonies or plantations, any servant or slave without the consent of the owner, or the carrying off from thence any *other person* or persons *whatsoever*, until such persons shall have taken out his ticket from the secretary's office within such respective colony or plantation, in such manner, and under such penalties and forfeitures, as in and by the said several laws is declared and provided." But even at this time, so little satisfied was parliament of the legality of the restraints thus imposed — in other words, of the legality of the powers under which they were imposed — so far at least as among the persons thus legislated upon were included, viz. "commanders of private ships of war, or merchant ships having letters of marque," — that in the act, and by the clause, from the preamble of which the passage above quoted is copied, provision is made for the declared purpose of giving legality to those same laws: "Be it *enacted*," says the statute, "that all commanders (as above) *shall*, upon their going into any of those ports or harbours, *be subject* and they are hereby determined to be subject, to the several directions, provisions, penalties, and forfeitures, in and by such laws made and provided, anything in this act to the contrary notwithstanding."¶

* 27 Geo. III. c. 2.
† 6 Geo. III. c. 25, § 7.
‡ 1787.
‖ 14 Geo. III. c. 83.
§ 13 Geo. II. c. 4, § 20. No. 1740.
¶ The words "*are hereby determined to be subject*" might, if they had stood alone, have been taken for words of mere *adjudication*.... But before these come words of enactment "*shall* .... *be subject*." From the *non obstante* clause it might again be argued, that nothing more was meant by this provision, than to save those colonial laws from being overruled by the other provisions in the *same* statute: and therefore, that the effect of this section in it was nothing more, than to *leave* the legality of these colonial regulations upon its own bottom. But upon examining the act it will be found, that there is not any part of it to which the provision in this section bears any specific or effectual repugnancy. It is only from some perfectly vague and incon-

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Among the powers actually exercised in New South Wales, with or without instructions from hence, conformably or unconformably to such instructions, is that of prohibiting or "preventing" masters of private vessels from "carrying off persons" from the colony, without special permission from the governor, particularizing each person permitted in each instance. Upon the exercise of these powers depends the whole system of government in this penal colony: every use which anybody could ever fancy it good for, or capable of being made good for. Even in America, and so early as the year 1740, the legality of these powers was looked upon as being so *questionable* at least (to say no more), as to require for the confirmation of it the authority of Parliament. In *America*, these powers were thus confirmed, and were therefore legal: but in *New South Wales* they have *not* been thus confirmed; for America is the only *place* mentioned in the act — American laws the only "*laws*." New South Wales has nothing in it that ever was a *law*, or so much as called *a law*, and America (God be thanked) has no such colony in it as New South Wales.

clusive inferences that any such apprehension could arise. But it requires little acquaintance with our statute law to have observed, how ready such apprehensions are to present themselves, and how ready the draughtsman is to quiet them with the customary *non obstante* opiate. Seven years had at this time scarce elapsed, since parliament, in the very act of supplying with money the embryo colony, sat still and saw the crown monopolize the supplying it with the powers of government. But at this latter period (1740) the tide, it seems, had already turned: and the wonder will be the less, that 34 years afterwards, when a new constitution was to be given to *Quebec*, parliament exercised the whole authority, and took upon itself the whole management of the business.

Will it be said — the confirmation of these colonial laws was necessary, so far and so far only, as they undertook to bind *others* of his Majesty's subjects, natives of the *mother country*, visiting the colonies for a time only in the course of office or of trade? I answer in the words of the court of King's Bench in a case that will presently be mentioned.[a] Among the "propositions, in which both sides seem to be perfectly agreed, and which indeed are too clear to be controverted," is "The 4th, that the law and legislative government of every dominion equally affects *all* persons and property within the limits thereof; and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An *Englishman* in *Ireland*, the Isle of *Man*, or the *Plantations*, has no privileges distinct from the natives." So far *Lord Mansfield*. If, then, these American laws were binding upon *any*body—were binding upon *Americans*, they were *already* binding upon *Englishmen*. They needed no act of parliament, to confirm them in their application to Englishmen and so forth.

[a] Campbell and Hall, Cowper's Reports, p. 208.

SECTION V.

EVEN IN AMERICA, THE CROWN HAD NO RIGHT TO LEGISLATE WITHOUT PARLIAMENT.

RELINQUISHED, as it has been, no otherwise than *tacitly*, if at all (for the point is not worth arguing,) if the power had been *declared* illegal, and abolished by express words, it would not have been so disposed of without very sufficient grounds. That over English subjects in England, or anywhere else, the king should, by himself or by others, exercise legislative power, without the concurrence of parliament, was repugnant to the constitution, was repugnant to Magna Charta.

True it is, for aught I know, that till the reign of George the Second, till the year 1740 at least, as above, it never had been disputed or doubted of: and the train of precedents by which it has been exercised, commences with what appears as the *first charter* given to the *first colony*, in the reign of James the First,* in 1606, or thereabouts.

But, in the days in which the practice thus originated, the exclusive right of parliament to legislative power was far from being defined as now. Even within the territory of England—on this, and that, and other ground — the king by his *proclamations* would be legislating without parliament, and even in spite of parliament. Whatever parliament would endure to see him do, this and more he was sure to do without parliament. By monopolies, by ship-money, by dispensations of penal statutes, on one pretence or another, he was even *levying money* without parliament. The very existence of parliament was a matter of perpetual contingency. At all times it depended upon the king's pleasure whether there should ever be another. And so long as he could contrive to go on with existing powers, and upon existing funds, he had everything to lose and nothing to gain, by calling to his aid any such troublesome assistance.

Even in *Lord Coke's* time, had this mode of legislating without parliament been questioned in the King's Bench, it would not have stood its ground: at least if Lord Coke had at that time been in disgrace, and the decision had depended on Lord Coke.

"King Edward the Sixth did incorporate" (says he†) "the town of St. Alban's, and granted to make ordinances, &c. They made an ordinance upon pain of imprisonment, and it was judged to be against this statute of *Magna Charta. So it is if such an ordinance had been contained in the patent itself.*" Thus far Lord Coke. The train of reasoning is

* See Lind's Remarks on the acts of the 13th parliament relative to the colonies, 1775.

† 2d Inst. 54.

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evident. It was by the glaring illegality in the case *last* mentioned (which is the *feigned* case,) that light was thrown on the covert illegality in the former case, which was the *real* case. It was a case actually decided, decided in the Common Pleas, and reported by Lord Coke himself.* The decision was given in the 38th year of Elizabeth, and even Elizabeth submitted to it.†

Had the first charter that was ever granted for the foundation of an English colony (say the charter, granted in 1606, for the colonization of the tract of land then comprised under the denomination of Virginia by James the First,)‡—had this first charter been questioned as illegal—as contrary to the decision in the St. Alban's case, in vain would it have been to have said,—"This case is different: THAT applies to Englishmen wishing to legislate in England: THIS applies to Englishmen wishing to legislate in a distant, and as yet unplanted region." To warrant any such distinction, there was neither principle nor precedent. Not *principle:* because, as to hardship, if Englishmen are to be legislated upon otherwise than by parliament, how was the hardship lessened by their being in the then wilderness of America? in a quarter of the globe, so far out of the reach of the protecting hand of parliament? Not *precedent:* for, of an attempt to subject them to legislation in this mode, the instance in question is, by the very supposition, the first instance.

The right of thus granting away the powers of parliament passed (it is true) unquestioned. Why? because nobody ever started up, to whom it had happened to conceive himself as being concerned in interest to question it. For, if a man went from England to live there, it was because he found it more agreeable to him to live there under those laws, than to live in England under English laws: and if at any time a man preferred English laws, England was at all times open to receive him. Whatever was the *cause*, such at least was the *effect:* the right remained unquestioned; and, remaining unquestioned, usurpation had time to clothe itself in the garb of law.

Admitting, that on any *one* mass of territory, having English owners, and not being, or having passed, under the dominion of any foreign power, the concurrence of the three estates is necessary to legislation, no reason can be given why, on any principle either of *utility* or *analogy*, it should be less necessary on any *other* spot so circumstanced. By remoteness from the natal soil—from the seat of connexion and protection—the hardship of whatever is looked upon as *tyranny* is not lessened but enhanced. The sense of *liberty* (of what is meant by *liberty* in one of its thousand senses) has not been found to evaporate by expatriation in English *men*, as the sense of smell has been said to do in English dogs. Of Englishmen surely it may be said, if of any men, *Cœlum, non animum mutant, qui trans mare currunt.*

For whom, or what, was it that the protection afforded by *Magna Charta* was intended? For the *inhabitants* of the land, or for the *soil* only?—for the flesh and blood, or only for the stocks and stones?

A lawyer, who should attempt to get rid of the application, of the case of the charter given to certain inhabitants of St. Alban's, to the case of a charter granted to certain inhabitants of other places in England, must answer boldly—"Only for the stocks and stones. Englishmen, the moment they get out of sight of the stocks and stones of England, for whom alone Magna Charta was designed, are neither worth protecting nor worth governing." But, unless it be on a spot, which being under foreign owners, affords a protection and a governance of its own, in what book will he find a colour for saying, that Englishmen, by being out of sight of English ground, are either out of the *protection* or out of the *governance* of an English parliament? Limited as the power of an English king is over Englishmen in England, in what book will he find that it is absolute over them everywhere else?

Will the portion of *consent*, of popular consent, given *in the first instance* to these charters, or the consent given *in succeeding times* to the laws made in America, in the several colonies, in consequence of these charters—will any *such* sanction be urged in proof of the original validity of a purely royal act, thus attempting to legislate over Englishmen without parliament?

Alas! what a cloud of illusions is involved in that little word *consent*, employed, as it is but too common for it to be employed! But, without plunging into any such discussions, it is sufficient to say here, that no such *unparliamentary* consent had any weight in the *St. Alban's case.* There never could have

* Coke's Reports, part 5, p. 64. Case of the corporation of St. Alban's, called by him *Clark's Case.*

† There was something more in this than in ordinary cases. A snake was seen, or thought to be seen, in the grass. Even in that age of general abjection and judicial dependence, the judges spied it out, and took fire at it. What little constitutional blood a man could at that time find in his veins, it called up in their cheeks. *More is meant* (say they) *than meets the ear. This is an attack upon Magna Charta: that peculiar and inestimable security of Englishmen, which (so often has it been broken into) has more than thirty times been confirmed.* "C'est ordinance est encounter le statute de Magna Charta, cap. 29. *Nullus liber homo imprisonetur.* Quel act ad estre confirm, et estably oustre 30 foits, et lassent le plaintiff ne poit alter la ley in tiel case."

‡ See Lind on the Colonies, p. 94, 1775.

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been applied, to the law of any American assembly of succeeding times, the *actual* consent of so great a proportion of individuals to be governed by it, as there probably was in the *St. Alban's* case. But this did not hinder the attempt made in that case (the attempt on the part of the king, in conjunction with a portion of the inhabitants of that one town, to legislate, on pain of imprisonment, over the rest) from being disallowed: disallowed on the ground of its being an invasion of the rights of parliament.

What is the consent required by the constitution to give validity to a law? The consent—not of a part surely, but of the whole. It is not the consent of that part of the king's subjects for whose exclusive advantage the law is made, that is sufficient to give validity to a law, by which others, not sharing in the benefit, are attempted to be bound: if it were, there would never be any want of consent to the worst law. Neither then, nor since, has the consent necessary to give validity to any English law, been either more or less than the consent of the two sets of trustees for the whole body of the king's subjects—the two *other* estates of Parliament.

The question is, whether the king, with the assent of a few persons named by himself, had it in his power to repeal, *pro tanto*, the statute called *Magna Charta?* The answer is given by the judges in the *St. Alban's* case: "L'assent ne poet alter la ley in tiel case." If this be not the very best of French, better English at least cannot be desired.

To supply what is thus in contemplation of law wanting in point of *consent*, will any such topic as that of *abstract utility* be resorted to? Will it be urged, in the view of giving validity to the illegal mass of pretended law, that the *benefit* of all parties followed from it? This benefit, admitting it in its full extent, this benefit, destined to be reaped in after ages, will it give retro-active validity to an act void from the very first instant? If so, at what point of time was it that, on a sudden, and without any efficient cause, an illegal act was thus converted into a legal one?

Legality, it must be remembered, not *expediency*, not abstract utility, is the question here: to confound the two ideas would be to tear all law up by the roots. Admitted in the fullest extent, the alleged expediency would prove no more than this, viz. that, had James the First obtained, by a law of parliament, authority for the foundation of his first colony—authority for the powers conveyed by the charters, in virtue of which this colony was founded—had the king so done—a law to that effect, if passed, *would have been* a good law: and so in regard to the several other *real* colonies, *real* charters, and correspondent *ideal* laws. But, the expediency of all these *ideal* laws, does it prove them *real* ones? does it prove that any such acts of parliament were actually passed?

When a practice is repugnant to acknowledged principles, the case of *general warrants* is sufficient to show how little force there is in mere official precedents, however numerous the train of them, and however ancient the commencement of it. For the purpose of that case, a list of *general warrants* (a list of the cases in which authorities of that description had been issued by the servants of the crown) was published at the time.* It begins with the Restoration; not surely because there were none of any earlier date (for such there must have been in numbers,) but because it was not conceived that authorities of that kind, issued at any less constitutional period, could possess any tolerable chance of being looked upon as *good precedents.*

Prior to the issuing of the first general warrant, there was no direct judicial decision against *general warrants*, as there was against legislative power exercised by the crown without parliament, in the case just mentioned: yet *general warrants*, spite of the number of precedents and length of the practice, could not stand their ground. Against *general warrants* there was nothing but *principle.* Against *colonization charters* there is the principle, and a direct *judgment* grounded on it. And who is there that will deny that, in the scale of common law, a thousand unjudicial official precedents are not equal to one judicial one?

SECTION VI.

NULLITY OF LEGISLATION IN NEW SOUTH WALES, FOR WANT OF AN ASSEMBLY TO CONSENT.

ALL this, however, is but skirmishing—matter of illustration, not of necessary argument. For, though the right of the crown to found colonies (as the *American* colonies were founded) without parliament, were ever so well established, a claim in that quarter to exercise or create legislative powers, to be exercised over Englishmen, Scotchmen, or Irishmen, in *New South Wales*—in this *colony sui generis*—in this so denominated, but perfectly nondescript, and newly discovered species of colony—would not be the less unfounded.

* The documents printed in that list would not be found all of them to come within this description: but of one sort or other there are 136. The title of the book in my possession is—"*Copies taken from the Records of the King's Bench, of Warrants by Secretaries of State,*" &c. 4to, 1763. No bookseller's name.

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In all the several charters by which legislative power, whether *per se* or *per alios*, was exercised by the king, there were two common features, and those most indispensable ones:—1. *Consent* on the part of the colonists as to their subjection to such powers—*irrevocability* of the privileges granted by such charters—irrevocability of the king's act, whereby such powers were created, or the right of creating them conferred.

The *irrevocability*, though a feature perfectly distinct from the *consent*, was a natural, and one may almost say, a necessary consequence of it; or rather preliminary to it. For what man of common prudence would have gone to embark his property and his prospects, under a form of government, in which, so long indeed as it remained unchanged, he looked upon them as safe, but at the same time without any security against its being changed at any time—changed into some unknown arbitrary form, under which every thing would go to wreck—changed without his being heard, and at the suggestion of some court favourite, whose object would be of course to extract plunder from the change?—Not general satire—particular history is here in view: *Elizabeth* and *James*, with their *favourites* and their *monopolies*.

The irrevocability of the sanction given by the crown was therefore of the very essence of the case. This attribute of it was recognized all along by the judicial power. Even in the most arbitrary times, the crown itself never pretended that its own charters of this kind were revocable at its own pleasure. The utmost of its pretensions was—that for certain causes, these powers of subordinate government were susceptible of being forfeited: it belonged to the judicial authority in that behalf (the Court of King's Bench) to pronounce—to pronounce judicially in each case—upon the existence of any such cause of forfeiture. And in the annals of that court, and of the colonies, are contained divers instances of prosecutions instituted on that ground, against colonial governments, and of resignations made of charters, under the apprehension of such prosecutions.*

As to consent (by which I do not mean a presumptive, constructive, fictitious, pretended, general consent, but actual, direct, individual, consent;) immaterial as the circumstance is in this view, under a government already formed, in a territory into the precincts of which a man has been introduced either by *birth* or *voluntary self-conveyance*—nugatory as any argument grounded upon it would be in the *ordinary* state of things—yet in a new formed, or forming government—in a new planted, or about to be planted, colony—every thing depends upon it: *utility*, and therefore that law, which so far, and so far only as it has utility for its basis, is any thing better than oppression and abuse, depends upon it altogether. To a man's being *born in* a country, *his* consent cannot be taken—but to his being *conveyed* to it, his consent can be taken; and, on its being taken or not, depends a Pandora's box of miseries and injuries.

In New South Wales, not only was this most indispensable of all requisites to the foundation of a colony—to the establishment of legislative power in a colony, wanting—notoriously wanting—on the part of the great mass of the intended population; but the getting rid of so troublesome a condition—the weeding it and eradicating it out of the about-to-be-new-planted colony, was the very object—the professed object—the sole professed object—of the foundation of this vast receptacle of penal suffering. If, in point of fact, it should ever acquire a title to the name of a "*colony*"—(the name bestowed upon it in the tenor of the law made for the foundation of it,)† it could only be in so far as the persons sent thither against their wills, and having a *legal right of departing* from thence at the expiration of certain terms, should, by *irresistible power, in defiance of that right*, be kept there each to his life's end.

In common *intendment*—in common, and not merely in vulgar, but in deliberate and well-considered language—permanence of inhabitancy is acknowledged to be of the very essence of colonization. Accordingly, in the disputes that of late have arisen on the affairs of the East Indies, the language on one side is, "To do thus or thus would be colonization:—as you tender your existence, forbear to colonize."

Force *under* the law, was to plant men there; force *against* law, was to keep them there: and when, under the law, they were planted, it was for this very and only end and purpose—that against law they might be kept.

NOLENTES *per populos dat jura* should be the royal motto, in this as purely royal, as it is daringly anti-parliamentary, colony of New South Wales.

So much as to the first mentioned condition, *consent*—consent to habitancy and subjection. But this condition, a condition so inseparable to the foundation of every colony that is any thing better than a bastile, being so essentially wanting to the foundation of this colony, it seems almost superfluous to extend the observation to the other kindred condition—*irrevocability of privilege*. That which was never granted, cannot easily be revoked. So far the inhabitants—the chosen

* See Lind, Remarks on the Acts of the 13th Parliament, 1775.

† 27 Geo. III. c. 2.

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inhabitants of New South Wales—are secure enough. What was never possessed, cannot be forfeited.

If common sense be not of itself convincing enough, e'en let us translate it into common law. In their day, the American Constitutions were legal ones: be it so. But *they* were by *charter: here* there is none. No charter either has ever yet been granted—or is in a way very soon to be applied for by *the* inhabitants, or any inhabitants of New South Wales. Yet has the colony been "*founded*" I suppose:—founded as Mr. Pitt and Mr. Rose found colonies.—*No charter, no colony.* In that one technical expression, are condensed the two substantial and rational grounds of nullity: no consent to subjection—no irrevocability of privilege.

All this while a sort of a colony there is—I am perfectly aware of it—that is, or has been supposed to be, capable of existing without charters, and in which the advisers of the crown have accordingly been used to find themselves pretty much at their ease. I mention it, to save gentlemen the trouble of catching at the shadow of an argument. It is the sort of colony that has been obtained by *conquest;* having surrendered, with or without capitulation; having or not having, at the treaty which confirmed the cession of it, a stipulation made in favour of it; having or not having, antecedently to its surrender, a constitution of its own. All or any of these varieties, might upon occasion afford considerable *amusement* to any learned gentleman, who, along with his brief, should have acquired a taste for the natural history of the law of colonies. But, as to any *practical use* for them, happily in the case of New South Wales there is none. To the host of follies included in the circumstance of distant *possession*, this colony at least, with all its peculiarities and all its faults, has not added that vulgar and crowning folly of distant *conquest*. It is needless to enquire, what on this occasion might have been the virtue of a string of *wampum:* no wampum, nor any substitute for wampum, has either been received or given in New South Wales. When, from their immense continental island, *Benillong* and *Yem-mer-ra-wannie** did us the honour to bestow a glance upon this our little one, it was in the character of private gentlemen, travelling for their amusement, or at least for our's: they signed no *treaty* with his Majesty, nor brought with them any diplomatic powers.

The flaw is an incurable one: if it were not, it would be none. No charter ever could, can now, or ever can be granted. It is not a case for charters: all the wax—all the parchment in the king's stationary office—all the law on all his woolsacks—would not make one. A charter, make it of what or how you will, must have somebody to *accept* it. But a charter—a thing to keep men in New South Wales—Who is there, or who ever can there be, to accept it in New South Wales? A charter to empower a free man to lead a life of slavery, and to be flogged as often as he endeavours to escape from it! †

Instructions and counter instructions—insinuations and counter insinuations—instructions in form and instructions not in form;—despotism acting there *by* instructions, and *without* instructions, and *against* instructions;—all these things there may be, and will be, in abundance. But of *charters*—unless *such instructions* be called charters;—of *constitutions*—that anybody that can help it will be governed by;—of any *lawful warrants*, unless from Parliament;—from the present day to the day of judgment there will be none.

No, most assuredly; no parchment, no wax, no cement is there whatever, that can patch the no-constitution of it together for a moment longer, or prevent the improved colony from being converted, any day in the year, into a still worse chaos than it is. No plaster of any kind can be laid on upon this universal sore, by any other than the all-healing hand of Parliament.

If this view of the law be not just, and if the penners of the New South Wales act were not themselves sensible of its being so, wherefore apply to parliament for powers, for the organization of a judicial establishment in that colony? Judicial power is in its nature inferior, subordinate to legislative. If the crown had an original right to create the superior power, how can it have been without the right of creating the subordinate? If, by the American charters, the king creates legislative powers, by the same charters he creates powers of judicature; or what comes to the same thing, confers authority for the creation of such powers.

This argument, it must be acknowledged, supposes something like consistency on the part of the penners of the act; and of consistency what traces in it are to be found?

SECTION VII.

NULLITY OF GOVERNOR'S ORDINANCES. FOR WANT OF A COURT TO TRY OFFENCES AGAINST THEM.

ONE imagination more, for a last effort. With or without a declaration to that effect by the king's governor, the laws of England, (let it be said,) such as they exist at present, and such of them as are applicable to the state of things in the new colony, transport

* Collins, p. 251.

† Letter I. to Lord Pelham, p. 193.

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themselves in one great mass into New South Wales. After them, transport themselves, as they came out, all subsequently manufactured masses of law, common as well as statute, such of them as are so applicable, and in as far as they are so applicable, each in an air balloon of its own making, without any body to send them out, or make it possible for them to be known when they are arrived. Moreover, along with the first great mass, transports itself in like manner the *right of establishing courts of justice* for the trial of all offences against all such masses of *English-made law*, present and future, *as they come in;* under the single condition, that the mode of procedure in such courts, in each sort of case, shall not be different from the mode of procedure in the same sort of case pursued in England. Why these conditions? — for this reason. The circumstance that rendered the authority of parliament necessary for the legalization of the sort of court which it has actually been employed in legalizing, is — that *that* court not calling in the assistance of a jury, though the cases are jury cases, the mode of proceeding under it is not according to the law of England. Being, therefore, the sort of court which the king's agent with all his powers had not quite power enough to make, thence came the necessity of sending it out, *ready-made* by the king, in pursuance of powers obtained from Parliament for the making it.

Unfounded this, a great part of it at least, in principle or in fact. But even if all the dreams in it were truths, the government of New South Wales would not, in point of legality, be one jot the better for them. These courts, made after the English pattern, serve for the trial of offences against English-made laws: — allowed; but the offences, for the trial of which proper courts are wanted, are *not* offences against *English-made* laws. By what courts, then, in New South Wales are these *non-English* offences to be tried? Not by these supposed *New South Wales made* courts, since, by the supposition, it is only for the trial of *English-made* offences that they can be made to serve. Not by the grand court, the establishment of which was the sole business of the statute: for it is to the trial of *English-made* offences that *that* court, by the express words of the statute, stands confined: — the court, when "convened," is to be "for the trial and punishment of all such outrages and misbehaviours, as, if committed *within this realm*, would be deemed and taken, according to the laws of *this realm*, to be treason or misprision thereof, felony or misdemeanour;" — not *all* "outrages and misbehaviours" *without exception*, but such alone as would be "misdemeanours" and so forth, "if committed within *this realm*."

The governor (suppose) issues an ordinance (such as, it will be seen, he has issued in abundance,) prohibiting an act, which would *not* have been either "misdemeanour" or "misbehaviour," "if committed within this realm."* Admit then, that it is really in the power of the crown to communicate to the governor, in his individual capacity (the power he has so often exercised,) the complete power of legislation. Power of *legislation* alone being thus communicated to him, power of *judicature* (except in the case of acts that would be offences "if committed in this realm,") not

* Obliged to copy from the act the words, "*this realm*," it is impossible to avoid noticing, to what a degree even the scanty scrap of power undertaken to be created by it, is torn in tatters by these two words: — a proof how little of the mind of the legislature was bestowed upon this business, and how slight any inference that can be drawn from what was *actually* done by it, to what was *intended* or in *contemplation* to be done. "*This realm*" — what realm? against the law of what realm must an act be an offence, triable under the court so constituted? Against the law of England? of Scotland? or of Great Britain, *i. e.* of both together? — If an act, being an offence — not against any law passed since the Union, but only against the law of England, as it stood before the Union; — if such an act be an offence triable in this court, so must an act which, though *not* an offence against the *English* law, *is* an offence against the *Scottish* law. To *point out* the confusion, is the only thing to the present purpose: to attempt to *clear it up* would take a volume.

Injuries purely *civil*, might, for aught I know, be "*misbehaviours*," but are they "*misdemesnours?*" I mean in the legal sense of the word, according to the law of *England*. Take for example acts purely negative. *Non-payment of debts:* non-performance of contracts, &c. &c. Blackstone, at least, is as decided as possible in the *negative*. [B. IV. ch. 1.] And how stands this matter under the law of *Scotland?*

England, I take for granted — England alone — was looked to as the standard of everything that was to be done: into Scotland, not so much as the mind of our legislators had ever travelled.

Offences, involving, in the description of them, denominations *common* or *proper* — names of *places*, *persons*, and *things* — things *real*, things *incorporeal*, *i. e.* fictitious — such as *offices*, &c. &c., may not improbably be found to be incommissible (*i. e.* acts, though of like tendency, may not be *offences*, or not *punishable*) in territories where such *places*, *persons*, *things*, &c. are not to be found. Even in England, Burn speaks of English laws rendered in this way inexecutable: — instancing those "which appoint an offender to be whipped by the *common hangman* — where perhaps there is no such officer." [*Burn's Justice, Conclusion.*] Instances are innumerable: I give this as most likely to be familiar. Offences punishable in England by an *ecclesiastical court* only — are they "*misdemeanours*" in New South Wales?

Points like these might be started, enough to fill a volume: all unresolved, and many unresolvable. The whole act is but a vast mine of nullities and *jeofails*. Found a colony out of an act like this? Build a house as well out of a load or two of brick-bats.

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being given to him or anybody, what would he be the better for it? He has power to *create* the offence, but neither he nor anybody else has any power to *punish* or *try* the offender for it, when committed. The governor, by his *proclamations*, has power to *enact new laws*. Be it so. But has he likewise powers to create *Star Chambers* — to punish such as shall fail of obeying those proclamations? Where is the court to try any such offence? The court created under the statute? By the statute itself it stands precluded (as hath just been seen) from meddling with them. A court of King's Bench, or any other court to be erected by the governor under his *instructions?* — those instructions which are to be to *this* colony, what *charters* have been to all *other* colonies? Nor that neither. Power or no power — instructions or no instructions — thus much seems clear enough — that, down to the time of Mr. Collins's quitting the colony in September 1796, no such court (no court other than what has been called there a *civil court*, in addition to the court for the erection of which special power is given by the statutes) had ever in fact been holden. A court to be composed of the governor alone, for the trying of offences created by the governor alone? If so, here then we have the very quintessence of despotism; too rank, one should have thought, even for the meridian of New South Wales. It is Star-chamber out Star-chamberized: legislature and judicature confounded and lodged together, both in one and the same hand.

Is it true, then, that even such a court — a court thus arbitrary — might have been created, and that without any powers from Parliament? If so, then (as far at least as "misdemeanours" are concerned,) there was no need of Parliament, for the establishment of the *less* arbitrary sort of court, therein established and described: — a court composed of "the judge-advocate . . . . . together with six officers of his Majesty's forces by sea or land;" the governor not sitting among them indeed; though, being the person to "convene" the court, he possesses (as it was evidently intended he should possess) the power of choosing, on each occasion, such members for it, as, on that occasion, he thinks, himself most sure of. The conclusion is then — that in spite of all suppositions, whatever ordinances he enacts and executes, are on a double ground illegal: first, because there is no law for enacting them; and again, because there is no law for executing them.

So much for *law*. In *fact*, in what set of cases the governor makes use of this court, and in what cases he does without it, or whether any precise line is drawn between them, is more than on the face of the documents (I mean the judge-advocate's printed journal) I should expect to be able to pronounce. As far as I have yet seen, I should suppose no certain line: but, in each individual case, if it seems of importance enough, the court is convened: if not, whatever be the offence — English made, or colony made — the governor does what he pleases with it, without troubling anybody else, unless it be the man who is to give the lashes, or to "*pull the house down*,"* &c. as the case may be.

SECTION VIII.

KING'S LAW-SERVANTS NOT INFALLIBLE.

BUT, (says somebody) do you consider, Sir, by what authority all these acts, thus charged by you with illegality, were done? It is not the minister alone, and *his* subordinates, that are implicated. This is not mere *treasury* business. The acts have not only the *king's* name and signature to them, but the sanction of the whole *council-board*, with the opinions of this and that and t'other *great dignitary of the law* included in it.

My answer is — all this makes little difference. It goes no farther than to show, that, as for a certainty a surprise was put upon *parliament*, so probably enough a surprise was also put upon the *council-board:* upon the council-board, including the legal learning and legal authority belonging to it. On putting the dry question of law — "Has not the crown, without special powers from parliament, powers to organize a constitution for a new colony?" the answer, judging from the supposed precedents of the American colonies, may, not very improbably, have been in the affirmative: — especially if given on slight consideration, as it naturally enough might be, in a case where no opposition was apprehended.

But, surprise or no surprise, God be thanked, it is not in the power of the king's counsellors† to inflict upon a single Briton an atom of punishment of their own creation, much less to inflict illegal punishment upon Britons by thousands, and to make *ex post facto* penal laws by dozens, in repugnancy to so many laws of parliament, including *Magna Charta* and the *Bill of Rights*. Let the sanctions lent to the measures be what they may — by whatever *pretences* — and from whatever *names* obtained — wholesale oppression was the object of it, wholesale oppression has been the result.

* Collins, II.

† I mean *legal* power, and under the constitution, while it stands: If indeed it falls, and despotism rises in the place of it, then indeed such power as that in question exists at any time, without difficulty: and *è converso*, if such power exists, the constitution is at an end, and despotism stands in the place of it.

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What *does* appear in point of fact, and from very high authority, is — that in matters of colonial legislation, there has been a time, and even since the accession of his present Majesty—when his Majesty's law-advisers in this behalf have not been altogether masters of this part of their business: so at least, in the court of *King's Bench*, in the famous *Granada* case — the great and only adjudged case since the foundation of the first colony, that has any bearing upon this point — (*Lord Mansfield* being spokesman) — was the opinion of the judges.* "The inattention of the *king's servants*" (speaking of his Majesty's law-servants) is the circumstance to which, as the sole cause, the dispute then on the carpet is ascribed by that discerning judge. The power of legislation, as exercised in that colony, in the way of *taxation*, on the 20th of July 1764, by the king alone, without the concurrence of any other authority — either that of parliament *here*, or that of an assembly of the colony *there* — exercised on the ground of its being a CONQUERED colony — is there supposed, though but *arguendo*, to have been in itself indisputable. But, before that day, to wit, on the 7th October 1763, these his Majesty's careless servants, not knowing, or not minding what they were about, had so managed as to divest him of it: and it was after having so done, that, forgetting what they had done, they picked it up again, and in the name of their royal masters exercised it as above: "inverting," says Lord Mansfield, "the order in which the instruments should have passed, *and been notoriously published*, the last act" was, under their management, "contradictory to, and in violation of the first:" and this is the "inattention" spoken of. Here, then, was an occasion on which, according to Lord Mansfield and the rest of the judges in the King's Bench, his Majesty's law-servants did not know what they were about: and this occasion was — the same as that now in question — that of the making or mending a constitution for a colony. This was in 1763 and 1764: and, forasmuch as a mistake of this sort was actually made, and by his Majesty's law-advisers, I think I may venture, from the demonstrated error of that prior time, to infer the possibility of an error on the like subject, on the part of the same description of persons, in 1786 and 1787. The arguments *ab auctoritate* and *ab impossibili* being thus cleared away, the other arguments may without much rashness be trusted to their own strength.

* Campbell, *v.* Hall, Cowper's Reports 1783.

SECTION IX.

NULLITY OF NEW SOUTH WALES LEGISLATION, PROVED BY THE GRANADA CASE.

IF any addition could be wanting, to the proof already given, of the illegality of the legislative power exercised by the sole authority of the crown in this colony, it might be drawn, and with full assurance, from this *Granada* case.

From the whole tenor of the argument of the court, as delivered by *Lord Mansfield*, and taken in short-hand by the reporter in that case, two propositions may be deduced with full assurance:—

1. That in no case had any *judicial decision* been given, down to that time (1774,) recognizing the right of the *crown* to legislate, *without parliament*, over an English colony, howsoever acquired, (whether *by* conquest, as *Granada* was, or *without* conquest:) that therefore, as to every point not necessarily comprised in the decision given in that Granada case, the question, so far as concerns *judicial decision*, in contradistinction to *extra-judicial opinion*, remained open to that day; and from thence, it may be added, to the present. The above-mentioned decision in the *St. Alban's* case — the decision disaffirming the king's right to legislate over Englishmen without parliament — has therefore nothing to contradict it.

2. That, although by that argument, in the case of the *foreign* inhabitants of a country acquired by *conquest*, the right in question is *affirmed*: yet, in that same argument, in the case of a colony acquired in any *other* way than by conquest, it is expressly *disaffirmed*; and in particular, it is disaffirmed in the case of all the several other colonies at that time in existence.

3. On *one* condition indeed, it is, in the non-judicial opinion relied on by that same argument, *in a certain way*, affirmed: and the condition is — that, as in those other colonies, a share be taken by an *assembly* of the colony in the exercise of the right. But, by the affirmance of the right, restrained as it is by this condition, the case of Mr. Pitt, in *his* exercise of it, will not be bettered. For, of any legislative *assembly* in the penal colony of *New South Wales*, there has never been so much as a shadow.

Nor, even thus, is the affirmance given to the right a distinct and *positive* one. It is only not disaffirmed, because not disputed; both parties (the crown and the local assembly) being alike engaged by their respective views and interests to assume it. These propositions, being of such importance, may seem to have a claim to very specific proof: such proof shall not be wanting.

Of all these propositions proof will be af-

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forded at the same time, by the two only authorities stated as having any bearing upon the case. These are—

1. A *dictum* in 1608 by Lord Coke, Chief-Justice, in his report of the famous case called *Calvin's case:* the case in which, on the accession of James the First, a right on the part of *Scotchmen* to certain privileges of *Englishmen*, was claimed and allowed. 2. A *non-judicial* opinion, given in 1702 by two practising lawyers—one of them at least at that time a servant of the crown—*Sir Philip Yorke* (afterwards Earl of Hardwicke) and *Sir Clement Wearg*, on a question relative to the right of the crown *to tax Jamaica:* an opinion which, so far as it went to the affirmance of the right, in the case of a colony obtained by *conquest*, appears to have had for its ground, and only ground, that same antecolonial *dictum* thrown out in Calvin's case.

As to what is said in Calvin's case, not applying (if to any colony) to any other than a colony acquired by *conquest* (such as New South Wales, most certainly, is not,) to scrutinize into it is a task that may here be spared.

The proposition is a mere *dictum: collateral*, and not even very perceptibly relevant, to the case in hand, the words of it, when extracted and wiped clean, as it has been very carefully by Lord Mansfield, from the portentous mass of absurdity and atrocity with which he found it entangled,* are as follows:—"If a king comes to a kingdom by *conquest*, he may change and alter the laws of that kingdom: but if he comes to it by title and [of] *descent*, he cannot change the laws of himself, without the consent of parliament."

Of the opinion given by Yorke and Wearg, the account given by Lord Mansfield is in these words:—

"In the year 1722, the assembly of *Jamaica* being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearg, to know what could be done, if the assembly should obstinately continue to withhold all the usual supplies. They reported thus:—'If *Jamaica* was still to be considered as a *conquered island*, the *king* had a *right to levy* taxes on the inhabitants: but if it was to be considered in the *same light* as *the other colonies*, no tax could be imposed on the inhabitants, but by an *assembly of the island*, or by an act of *parliament*.'

"They considered the distinction in law as clear, and an indisputable consequence of the island's being in the one state or the other."

"In *the* one state," says Lord Mansfield, "or *the* other." Neither did he, therefore, any more than those whose opinions he was adopting, know of any *third* state. They recognized not any such state, as that of a colony acquired otherwise than by conquest, and yet capable of being legislated upon by the crown alone—by the crown, without any further sanction, either that of a local assembly, or that of the supreme legislative body in the mother country—without any check at all upon absolute autocratic power—without the necessity of any consent, either on the part of any special deputies from that particular division of his Majesty's subjects, or on the part of the representatives of the whole.

In the case which drew this argument from Lord Mansfield, the point he was bound to determine, and which he accordingly did determine, was—that, *as matters stood*, the power of taxation, as exercised by the crown in Granada, *was not* legal. Another point which, being at liberty to speak to it or not, he thought fit to speak to was, that *if matters had been otherwise*, such power *would have been* legal. If, in humble imitation of such high and sincerely respected authority, and in precisely the same view, viz. that of seeing important constitutional questions settled on the broadest and most solid grounds, it may be allowable for an obscure ex-lawyer, on this same ground, *to travel*, as the phrase is, *a little way out of the record*, I will venture to state it as a question, which, notwithstanding the opinion so distinctly given by that great lawyer in the affirmative, remains still quite open, whether, even in the case of *conquest*, in any colony acquired since the Revolution, *Trinidad* for example, the right of the king to legislate without parliament—I mean, without express authority from parliament—would, *in case of dispute*, be found maintainable in law?

Over *Englishmen*, it stands expressly negatived (as already mentioned) by *Magna Charta*, and by the interpretation put upon that statute, by the judicial decision given in the *St. Alban's* case.

Over *foreigners*, inhabitants found existing in a colony acquired by conquest, it would (I am much inclined to think) be regarded as negatived, as well as over *Englishmen*, by the two connected constitutional principles, recognised in the 4th and 5th articles of the *Bill of Rights:* viz. that neither *in actu* nor *in potentia*, shall a king of England have, *as such*, without the express allowance of parliament, either a separate army of his own, or a separate purse. And in this light, it appears from *Edmund Burke*,† that the Bill

* Pronouncing the laws of every infidel (*i. e.* non-christian) country void in the lump, and so forth: Turkey, Hindostan, and China, for example. Whenever the khan of the Tartars sounded his trumpet after eating his dinner, it was to allow other princes to eat theirs. When this christian barbarian thus sounded his trumpet, it was to prohibit other potentates from eating their dinners: at least from eating them in peace and quietness. All infidels (he says) are perpetual enemies.

† Speech upon American taxation, 19th April 1774; 3d edition, 1775, p. 54.

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of Rights was most publicly (viz. in the House of Commons) and constantly, and, for anything that appears, without contradiction, considered by *George Grenville*, himself a *lawyer*—(according to Burke, even too much of a lawyer)—before he was a *minister*, and this not on the ground of *policy* merely, but of actual *law*.

Be this as it may, what is certain is—that the question is still open, notwithstanding the decision in the *Granada* case; because in that case, though an opinion was given, affirming the right of the crown to legislate in case of conquest, that opinion was not necessary to the decision then pronounced.

How much better for this country, as well as so many other countries, would it have been, if instead of fishing for drops of sense out of the extrajudicial ravings of Lord Coke, men of law had attended, on the one hand, to the direct decision of the judicial authority, as reported, in sober though very energetic language, by the *same* God of their idolatry, in the St. Alban's case; on the other hand, to that of the legislative authority, as displaying itself in the *Bill of Rights!* If they had, nothing in the way of legislation would, from first to last, have been done in English-America, but *by* parliament, or with *express* authority from parliament. It would not then have been so much as dreamt of, that it was in the power of the king, by confederating with a part of his subjects, withdrawing themselves for this purpose to a vacant territory remote from the eye of parliament—that it was in the power of his law-servants, by any such management, to oust parliament of its rights: I mean its exclusive right of legislation, as established in the St. Alban's case: Dissension would then have been nipped in the bud; and the American war, with all its miseries, and all its waste of blood and treasure on all sides, would have been saved.

Unfortunately, in the St. Alban's case, the scene not lying in America, nor any thought being entertained by anybody about America, no such word as *America* is to be found. Of *colonies*, as little: for at that time scarce had any such idea as that of *colonization* ever presented itself to any English mind. And thus it happened, that when America came to be the order of the day with lawyers, nothing appeared in their common-place books, to guide them to that case.

What is curious enough, is—that in the very first instance of a grant of land made by a charter from the crown of England to intended settlers in America, these portions of *American ground* were declared to be put upon the same footing in point of law, as if contained within a spot of *English ground;*—the manor of *East Greenwich*.* And with the St. Alban's case, then comparatively a recent one, before their eyes—with this case, one of the most prominent cases, in the most prominent of all law books, full in their teeth, were these crown-lawyers audacious enough to make their king grant, to these inhabitants of *East Greenwich*, privileges which had already been declared illegal, not fourteen years before, when granted to the inhabitants of *St. Alban's*. But the grant was of the number of those exertions of prerogative, which were not expected to come before an English court of justice, any more than they were intended for the eye of parliament. Parliament, never for two days together sure of its own existence, had too much of its own and the whole nation's business upon its hands, to be inquisitive about a handful of obscure adventurers, who, turning their backs upon their country, betook themselves to other laws.†

All this, except what concerns the want of power, on the part of the servants of the crown here in England, to legislate over Englishmen in New South Wales, and without any of those limitations, without which, or some of them, no such power had ever been exercised by any servant of the crown of England anywhere else, is, as I have already observed and acknowledged, a mere work of supererogation, with reference to New South Wales. But there are other places, with reference to which it may be not altogether so immaterial:—say *Trinidad* for example.

Mischievous as the effect of these questions might be, if ill-timed, I start them without any sort of scruple. Parliament being now sitting, the tendency as well as the object of them is, not to create confusion, but

* 'All the lands within the precincts of the colonies (viz. between 34 and 45 degrees of latitude) were on petition to be granted by the king,' "to be holden of the king, as of his manor of East Greenwich, in Kent, in free and common soccage only, and not in capite." *Lind*, Remarks on the Acts relating to the Colonies, p. 94.

† Another example may help to show the force and virtue of such exercises of regal power, in the character of *precedents*. On the 23d of March 1609, about three years after the first charter, a second is granted to the same company, with additional powers. Among these is a power to any two of the council of the company resident in England, *to send out of England*—to send out to their colony—"there to be proceeded against and punished, as the governor, deputy, or council there shall think meet"—any persons who, after engaging in the service of the company, and having received earnest-money, shall either have refused to go out thither, or have returned from thence.[a]

What cared these men (I mean the crown-lawyers who drew this charter) about the *St. Alban's* case, and the court of judicature that decided it? As little as about *Magna Charta* which it expounded: as little as their successors, who drew the *New South Wales Act* for Mr. Pitt.

[a] Lind. Part II. § 1, p. 100.

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to prevent it. How desirable, on every account, that rights of such importance should be fixed at once upon the rock of *legislation*, instead of being left to totter upon the quicksands of expected judicature, waiting for "the competition of opposite analogies!"* Can it be worth while to leave so much property a prey to insecurity—so many confident expectations a prey to disappointment—for the chance of saving a little longer the stump of a rotten prerogative, and perhaps the pride of a few lawyers?

But, all collateral questions dismissed, thus, on the ground of law, stands the government of New South Wales. Over Britons or Irishmen, in or out of Great Britain and Ireland, the king, not being himself possessed of legislative power, can *confer* none. To confer it on others—those others being his instruments, placeable and displaceable by himself at any time, is exactly the same thing as to possess and exercise it himself.

The displaceable instruments of the crown—the successive governors of New South Wales—have, for these fourteen years past, been exercising legislative power without any authority from parliament: and either without any authority at all from anybody, or at most without any authority but from the king: and all along they have been, as it was most fit they should be, placed and displaced at his Majesty's pleasure.

And among those, over whom legislative power has thus been exercised, have been individuals by hundreds, or, ere this, by thousands, who, so far from subjecting themselves to this power by their own *consent*, or having been subjected to it by any consent on the part of their *ancestors*, under whom they were born and bred, have all along been doing their utmost to make their *escape* out of the reach of it: and this very absence of consent—the very energy and notoriety of their repugnance—is among the very grounds on which, in the most important case of all, that of confining to this land of bondage such as are free by law, the power thus exercised over them would, if at all, be justified.

Of two things, one. Either there is not at this moment any legal power of legislation in *New South Wales*, or there is not any legal power of legislation in *Great Britain*—*Magna Charta* is waste paper. If, without fresh support from parliament, the constitution of New South Wales stands, that of Great Britain and Ireland is no more. If, without authority from parliament, the king can legislate over Britons and Irishmen in New South Wales, so can he in Great Britain and Ireland. If, without authority from parliament, the king can confine to that place of exile any such quondam bondsmen, reconstituted freemen by the expiration of their legal terms of bondage, so likewise can he deal by freemen who never were in bondage. If men of either description can be thus confined *when there*, with equal right may they be *sent there*. The King is absolute: and, instead of convening Lords and Commons to Westminster Hall to join with him in making laws, may send them to have laws made upon them in New South Wales.

* Paley.

SECTION X.

GOVERNOR'S ILLEGAL ORDINANCES EXEMPLIFIED.

1. *For Prevention of Famine.*

THUS, then, stands legislation there in point of *right*. In point of *fact*, I have already observed, there has not been any deficiency of it; or, if there has, it has not had the deficiency in point of law, or any suspicion of such deficiency, for its cause. *Ten* classes, comprising the whole population of the colony, have already been brought to view: half of them, or thereabouts, subject by law, in one way or other, to a certain degree at least (for aught appears,) to the governor's legislative power: the other half, *not* thus subject to it. No traces of any such distinction, in point of *right*, appear in point of *fact*. *Regardless*, or (to embrace the more probable, as well as more candid supposition) *unapprized* of any such distinctions, he legislated *chance-medley* upon all. The terms of each ordinance or mandate being general—addressed to all alike—no exception of this or that denomination of persons—neither *exception* nor *specification* (which is as much as to say an exception of all denominations not specified)—obedience appears to have been expected and exacted from all alike. *De jure*, a limited monarch (though most strangely limited)—*de facto*, he was an absolute one: as, indeed, in the situation in which he, and everybody under him, had been so unnecessarily placed, it was sometimes at least, if not always, necessary that he should be.

To satisfy the reader at one and the same view, that of legislation there was little or no *want* in *one* sense, and at the same time a most urgent and perpetual want in the *other*—that there was *plenty* of legislation, accompanied all along by a most urgent *need* of it—here follows a list of the chief *objects* or *purposes*, which the ordinances actually issued appear to have had in view. To class a set of laws under the very heads which point out the *reasons* of them—such, if not a very ordinary mode of classification, is neither an uninstructive, nor surely an unfair one.

In the journal of the late judge-advocate of the colony, indications more or less distinct

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may be found, of a set of ordinances, of one sort or other — in number between sixty and seventy — issued within a period commencing with the arrival of the first expedition on the 20th of January 1788, and ending with the month of September 1796; a period of not quite nine years.

Among the *objects* or *final causes* of these regulations, the following appear to have been the principal ones: —

1. Security against *scarcity* and *famine*.
2. Security against *depredation*, and other mischief from within.
3. Security against mischiefs from without, viz. against injuries from the *native savages*.
4. Security against accidents by *fire*.
5. Prevention of *drunkenness*.
6. Enforcement of attendance on *divine worship*.
7. Prevention of *emigration*—whether on the part of *non-expirees* — of *expirees* — or *both* together without distinction.

These objects—were they of no moment? The mischiefs thus guarded against—was there anything singular or unexampled in them?—anything which, to a man of ordinary forecast, legislating in England could be expected to be invisible?

Without entering into particular examinations, thus much may be averred in general terms without error — that among these ordinances are many either altogether indispensable, or indisputably useful: speaking all along of such as, being introductory of *new law*, adapted to the particular exigencies of the spot, became *creative* of so many correspondent *offences*, such as would *not* be "*misdemeanours or felonies, treasons or misprision thereof*," *if committed in* "*this realm*;"* to use the words employed by the act, in the description of the only offences, which the only court of justice legalized by it, received authority from it to punish.

In every instance, the stronger the necessity of each illegal ordinance, the clearer the innocence of the *local* lawgiver, if not in a *legal* point of view, at least in every other: but the more clear *his* innocence, the more flagrant the guilt of those who, sitting in the bosom of security, sent him out thus to legislate with a halter about his neck, and without legal powers! Guilty, if in their dreams they thus exposed him: how much more so if awake!

From the sort of account given of these several ordinances by the judge-advocate (an account which had no such scrutiny as this for its object,) to speak with decision, and at the same time with correctness, as to the legality of the ordinance, is not in every instance possible. In many, perhaps most instances, one and the same ordinance will have been in part illegal, in part legal: legal, in so far as it bears upon the faculties, active or even passive, of persons belonging to the classes above distinguished as legally subjected to the authority of the governor; illegal, in as far as it bears in like manner upon persons *not* so subjected.

For showing, by the tenor of the ordinances themselves, the urgency of the demand for legal authority for the issuing of them, and thence the guilt of those by whom it was left unsupplied, I select, out of the above seven cases, the three most prominent ones: *famine*, *drunkenness*, and *escape*.

The *absence*, coupled with the *need*, of any of the powers of government — this combination, as far as it extends, is *anarchy*. Famine and anarchy are the grand intestine foes, which all *infant* settlements have to struggle with. Each leads on and exasperates the other. From one or other, or both, many expeditions of this sort have suffered more or less severely: some have perished altogether. Such has been the case where the spot has been comparatively at next door to the source of power and supply: in *America* for example, at scarce a quarter of the distance. To any considerate eye, how much more repulsive the danger in *New South Wales!*

This double source of destruction *ought* to have been foreseen; and with an ordinary degree of intelligence and attention *would* have been foreseen: and being foreseen, should of itself have been sufficient to *prevent* the establishment — if not of *any* colony — at least of any colony *so composed*. In a country so situated and circumstanced — of itself yielding nothing in the way of sustenance, and at that unexampled distance from the nearest country that yielded anything — it was in the very nature of the enterprise, to deliver up the persons sent upon it, to the scourge of *famine*: it was in the very nature of the enterprise, to give birth to enormous exertions, in the way of national *expense*, in the view of protecting them against the affliction: it was in the very nature of the enterprise, that such exertions should be more or less *ineffectual*. Such was the *tendency* of it—such was the *event*: many sunk under the pressure: the remainder, for months together, stood between life and death. Death must evidently have been the general lot, had it not been for the exercise of those powers, of which the founders of the establishment *here at home* had left it destitute.

Such negligence, to give it the gentlest name, being too flagitious to be suspected, was not in that *Ultima Thulé* followed with those consequences, of which it *might* have

* In whatever sense the word *this realm* be understood. *Vide* supra, p. 264.

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been productive, in a situation communicating more freely with the centre of information. Against anarchy, a battalion of well-armed soldiers, to keep in order a band of unarmed convicts—such a remedy, expensive as it is, must be allowed to be a *strong* one: continual as the apprehensions are, that it will not be strong enough.

EXAMPLES of Ordinances, having for their object security against *Scarcity* and *Famine*.

1. Page 23, *March* 1788. "Much damage .... by hogs — .... Orders given .... any *hog* caught trespassing, to be *killed* by the person who actually received any damage from it."

2. Page 28, *May* 1788.—"The governor .... directed every person in the settlement to make a *return* of what *live-stock* was in his possession —"

3. Page 98, *March* 1790.—"It being found that great quantities of stock were killed, an order was immediately given, to *prevent the farther destruction* of an article so essential in our present situation."

4. Page 101, *27th March* 1790. — "Damage was received from the little stock which remained alive: the owners not having wherewithal to feed them, were obliged to turn them loose to browse .... It was however ordered, that the *stock* should be *kept up during the night*, and every *damage* that could be proved to have been received during that time was to be *made good* by the owners — .... or the animals .... *forfeited*." —

5. Page 105, between the 3d and the 7th of *April* 1790. — "All *private boats* were to be *surrendered* to the public use." This was for fishing: a determination having been taken "to reduce still lower what was already too low" (the ration.) "In *this* exigency, the governor had thought it necessary to assemble all the officers of the settlement—civil and military — to determine on .... measures——"

6. Page 104, between the 3d and 7th of *April* 1790. — "The lieutenant-governor .... called a council of *all* the *naval* and *marine* officers in the settlement, when it was unanimously determined, that MARTIAL LAW should be proclaimed; that *all private stock*, poultry excepted, should be considered as the property of the state!"

Of the several acts of disobedience with reference to these respective ordinances, how many are there that would have been "*misdemeanours*," if committed in England?—Scarce a single one.

The ordinances all prudent and *expedient*:—upon the face of them, at any rate: some at least *necessary*; necessary to a degree of urgency to which even conception cannot reach in England. *Sanction*, the *physical*: *penalty of non-legislation*, not scarcity only, but *famine*.

SECTION XI.

GOVERNOR'S ILLEGAL ORDINANCES EXEMPLIFIED.

2. *For Prevention of Drunkenness.*

Improvidence — Indolence — Helplessness — all *extensive* as well as *intense*, to a degree scarce conceivable in this country, were the prominent features of this reformation colony, down to the time when its historiographer took his leave of it.* But of all these weaknesses, *drunkenness* was the principal and perennial source.†

Prevention — anything like *complete* prevention—being out of the question, to snatch from this vice what *could* be snatched from it of its prey, would be as important an object as it was a natural one, to a governor legislating on that spot. But *important* is not strong enough. In *this* country, *well-being* only; in that, even *being* was attached to it. Upon sobriety, depended labour: upon labour, the means of immediate subsistence. In that state of things, to legislate against *drunkenness* was to legislate against *famine*. The *means* chosen might be more or less apposite; the result more or less successful. But the *endeavour* was as necessary as *life* is necessary: and for this endeavour, the authority obtained from parliament was as insufficient as for all the others.

Here, as in the case of *famine*, the same natural incompatibility established between the *expedient* and the *lawful*: to the governor the same distressing option between *legal* duty and *moral*, supposing the difference to have been present to his view.

Among the ordinances actually issued by him on this ground, it will be only by accident, if any one be found, that was not *expedient*: it will be only by accident, if any one can be found, that was not illegal. As to the *test* of illegality, it is already given. To apply it to the several ordinances, article by article, would to lawyers be unnecessary, to non-lawyers tedious beyond endurance.

No. 1. Collins, I. p. 175: *28th August* 1791. —"Spirituous liquors .... Ordered that none should be *landed*, until a *permit* had been granted by the judge-advocate: and the provost-marshal, his assistants, and two principals of the watch, were deputed to *seize* all spirituous liquors which might be landed."

No. 2, p. 300: *July* 1793. — "Spirituous liquors. Notice" (by the lieutenant-go-

* Letter I. to Lord Pelham, p. 175 to 177.
† Ib. p. 190 to 195.

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vernor,) "that any person attempting to *sell* spirituous liquors without a *licence*, might rely on its being seized, *and the house of the offending parties pulled down*."

No. 3, p. 449: 18*th January* 1796.—"The governor forbade all persons .... to *distil* spirituous liquors .... on pain of *such steps being taken for their punishment as would effectually prevent a repetition of so dangerous an offence*." "In pursuance of these directions," pursues the text, "several *stills* were found and *destroyed*." Rather more of the mystery of despotism than of the certainty of law in the above *sanctionative* part: but, by the *practical comment*, the mystery was unravelled.

The forbidden practice is spoken of as being "*in direct disobedience to his Majesty's commands*." Here then we have one instance at least, in which the name of Majesty was profaned, for the purpose of giving an apparent sanction to these violations of law, which were found better adapted to the purposes and dispositions of ministers, than the legal authority, which might or might *not* have been obtainable from parliament.

No. 4, p. 483.—"Direction by the governor .... that none of those persons who had obtained licences should presume to carry on a traffic with settlers or others who might have grain to dispose of, by *paying for such grain in spirits*." Then, in case of contravention, comes the menace in the established mysterious style: their licences would immediately be recalled, and *such steps taken for their punishment, as they might be thought to deserve*." Also that "*trading, to the extent which he found practised*, was strictly forbidden to *others*, as well as to those who had *licenced* public houses." Observations, in various shapes, present themselves: amongst others a question, how a man was to know whether he was safe or no under this law? But as to what may apply more particularly to individuals *there*, this is not a place for observations.

SECTION XII.

EXPIREES FORCIBLY DETAINED.

No. 1. Collins, I. p. 74: *July* 1789.—Liberty of departure, and freedom from bondage on the spot, both refused to a number of *expirees* at the same time; on the ground that no evidence of the original commencement and length of their respective terms was to be found.*

There being, for anything that appeared, no authority for treating them as convicts, the *legal* consequence would have been, in England, and in short under any system of of law but that of New South Wales, that they should have been treated as freemen. Instead of that, they were kept in confinement and bondage there, till a time which might never happen.

The omission of the papers in question is ascribed by the historian, as by a candid interpreter it naturally would be, to "oversight," and the oversight is spoken of as being "*unaccountable*." What is curious enough is, that this omission is not the only one of the same kind.† But, even though it were the only one, indications are not altogether wanting, such as might lead to a suspicion at least, as to the cause. In the list of convicts, with their respective terms and days of sentence, given by Governor Phillip,‡ *five* persons are named whose terms were to expire in the very month in question, July 1789. Of these there was not one whose remaining penal term, on the day of his being *shipped* for transportation, or at least on the day of the ship's sailing, was so long as two years and three months; nor, on the day of his *landing*, more than eighteen months. Deducting, if it be but six months, for the time requisite for return, had these convicts, all of them, had a vessel in readiness for them to embark in for England, and embarked and arrived accordingly, so as to have reached England by the end of their respective terms, there would have remained no more than a twelvemonth for them to have continued, according to their respective sentences, on the spot to which they were conveyed at so heavy an expense. Is it natural, that after remaining in confinement in England for near five years out of his seven, a man should have been sent out to the antipodes with a view of his not being kept there for more than a twelvemonth? If not, then the *non inventus*, upon

* Collins, I. p. 74: *July* 1789.—"Notwithstanding little more than two years had elapsed since our departure from England, several convicts about this time signified that the respective terms for which they had been transported had expired, and claimed to be restored to the privileges of free men. Unfortunately, by some unaccountable oversight, the papers necessary to ascertain these particulars had been left by the masters of the transports with their owners in England, instead of being brought out and deposited in the colony; and as, thus situated, it was equally impossible to admit or to deny the truth of their assertions, they were told to wait till accounts could be received from England; and in the meantime, by continuing to labour for the public, they would be entitled to share the public provisions in the store. This was by no means satisfactory; as it appeared they expected an assurance from the governor of receiving some gratuity, for employing their future time and labour for the benefit of the settlement."

† See Collins, II. 22, 131, 267, 331.

‡ Voyage, Appendix, p. lv.

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the documents by which their freedom would have been established, may not appear altogether so unaccountable as without this comparison of circumstances it would naturally appear to be.

What is *certain*, from Governor Phillip's list, is — that certain persons, *five* in number, were in this predicament in this same month. What appears little less so is, that the persons claiming their liberty in that same month were those *same* persons: "*conscious in their own minds* that the sentence of the law had been fulfilled on them," are the terms employed on this occasion, in speaking of these same persons, by their ever-candid historian and judge.

What they *claimed* on this occasion was, in the first instance, *pay*, upon the footing of *freemen:* what was announced to them on this head was, that "by continuing to *labour for the public*, they would be entitled to share the public *provisions* in the store;" that is, be kept from starving, on condition of their being kept in *bondage*.*

The supposition of an intentional suppression anywhere, is, it is true, no more than a bare surmise: a suspicion, given as nothing more, and which, if unfounded, may be easily disproved. In the meantime, the probability of it will not be found diminished by Nos. 6, 7, 8, 9, 10.

No. 2. Collins, I. 74. *July* 1789. — It was on this same occasion, that one of the claimants in question, having in presence of his Excellency "expressed himself disrespectfully of the lieutenant-governor, was . . . sentenced to receive 600 lashes, and to wear irons for . . . six months." What the *words* thus punished were, does not appear: but what does appear beyond doubt is — that if there had been no such violation of law on the one part, there would have been no such violation of respect on the other.

No. 3, p. 159. *April* 1791. — Information given by the governor to the convicts, "that none would be permitted to quit the colony who had wives and children, incapable of maintaining themselves, and *likely to become burthensome* to the settlement, until they had found *sufficient security* for the maintenance of such wives or children, as long *as they might continue after them.*" Considering the latitude of the discretion assumed by some of these terms, this notice may be considered as a pretty effectual embargo upon the whole married part of the community of *expirees*.

No. 4, p. 169. *July* 1791. — Information given by the governor to the *expirees*, that those who wished *not* to become settlers in New South Wales were "*to labour for their provisions, stipulating to work for twelve or eighteen months certain;*" and that afterwards, on condition of their entering into such engagement (is not that the meaning?) "*no obstacles would be thrown in the way of their return to England;*" but that, as to "*assistance*" for any such purpose, nobody was to *expect* it.† Illegal *detention*, for twelve or eighteen months, nobody was to know which, which is called "*certain;*" and this at any rate *universal:* — illegal *bondage*, for the same uncertain certainty, and equally universal. And at the end of this certainty, what was to be their fate? As to the means of departure, they were to get away if they could, but they were to have no "assistance:" as to their condition so long as they *staid* (that is, as to the greater part of them, so long as they *lived,*) they were to be either bond or free, as it might happen: nobody was to know anything about the matter. Such is legislation in the *antipodes:* such is legislation by the servants of the crown: such is legislation without parliament.

No. 5, p. 190. 3*d December* 1791. — Sailed the Active and Albemarle for *India*. After their departure, *expirees* were missing. "Previous to their sailing, the governor was aware of an intention, on the part of the seamen, to facilitate such their departure. He thereupon instructed the master to deliver any persons whom he might discover to be on board, *with-*

* Quere, At what *time*, and by what *means*, and by *whom*, were these facts ascertained *at last*, for the purpose of their insertion in the above-mentioned printed list. In the printed voyage, the date on the title-page is 1789: the date in the dedication is the 25th of November in that year. Among the materials of which the publication is composed, all the *other* articles at least were transmitted *from* New South Wales. If it was from New South Wales that *this* document was transmitted with the rest, the time of its being sent from thence must have been considerably *anterior* to the time in question. On this supposition, they must actually have been in New South Wales, at the very time when "it was found that they were left by the masters of the transports with their owners in England" Collins, I. 74.

† I cannot take upon myself to affirm with absolute certainty, whether the sense, in which the passage presented itself to me, be in all parts correct. To keep clear of misrepresentation, I here transcribe it at full length —

"The convicts, whose terms of transportation had expired, were now collected, and by the authority of the governor informed, that such of them as wished to become settlers in this country should receive every encouragement; that those who did not, were to labour for their provisions, stipulating to work for twelve to eighteen months certain; and that in the way of such as preferred returning to England no obstacles would be thrown, provided they could procure passages from the masters of such ships as might arrive; but that they were not to expect any assistance on the part of government to that end. The wish to return to their friends appeared to be the prevailing idea, a few only giving in their names as *settlers*, and none engaging to work for a certain time." Collins, I. 169.

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out permission to quit the colony, as prisoners, to the commanding officer of the first British settlement they should touch at in India."

No. 6, p. 280. *August* 1792. — "Such [expirees] as should be desirous of returning to England were informed, that no obstacle would be thrown in *their* way, *they* being" (*i. e.* all of them being) "at liberty to ship themselves on board of such vessel as would give them a passage." Such was the intention *announced*. What was the intention at that same time *entertained*? The following words explain it: — *Now* it was that "it was understood that a clause was to be inserted, in all future *contracts* for shipping for this country, subjecting the masters to certain penalties, on certificates being received of their having brought away any convicts *or other persons* from the settlement without the governor's permission: and, as it was not probable that many of them would, on their return, refrain from the vices or avoid the society of those companions who had been the causes of their transportation to this country, *not many could hope* to obtain the sanction of the governor for their return."— Not "*obtain*" it? Agreed. But — not so much as "*hope*" to obtain it? not even at the very time when it was expressly promised to them? — a promise made to *all;* and this at the very time when it was determined that, a few only excepted, none should ever receive the benefit of it!

No. 7, p. 268. 19*th February* 1792. — *Intention executed.* Howsoever it may have been as between the intention *announced* and the intention entertained, between the intention entertained and the execution that ensued there was no repugnance. On this day sailed for Canton the Bellona. Into this ship had been received *six* persons from the settlement: *two* of them, *expirees*, *by* permission; *two* others, *expirees* also, but *without* permission; the remaining *two*, *non-expirees*. Of the *four* latter it is stated, that they had been "secreted;" also that they were "discovered," "the ship being smoked." That they were accordingly re-landed at least, if not otherwise punished, may pretty safely be concluded, though not expressly mentioned.

Of the two *non-expirees* it is stated, that "they had not yet served the *full* period of their sentences." From this it seems not unreasonable to conclude that this full period would have arrived before their arrival in Great Britain. If so, then neither by their *arrival*, any more than by their *departure*, would they have gone beyond the exercise of their renovated rights.

No. 8, p. 268. 15*th February* 1793. — At this time the expectation "about the clause . . . . in the charter party, for preventing shipmasters from receiving any person . . . . from the colony, without the express consent and order of the governor," was found to be realized. The Bellona came provided with this clause. She had sailed from England on the 8th of August 1792.

No. 9, p. 283. 24*th April* 1793. — *Intention executed a second time.* Sailed the Shah Hormuzear and Chesterfield. "But few convicts [expirees] were *allowed* to quit the colony in these ships." On a subsequent occasion, in November 1794, the number received on board the same number of ships (the Endeavour and the Fancy) had been *near* a hundred: whereof by permission, 50; without permission near 50 more. Ib. p. 398.

No. 10, p. 316. 2*d October* 1793. — *Intention executed a third time.* Sailed the Boddingtons and Sugar-cane for Bengal. "From the Sugar-cane were brought up this day. . . . , two expirees: they had got on board without permission. — Punished with 50 lashes each, and sent up to Toongabbe."

In the continuation of the history, no *express* statements of detention have been met with. The historian not being at this time present in the colony, the precision exhibited in the former volume no longer presents itself in the same degree. During the latter period, the conception which it seems to be the object to present to view, is rather the removal of the restraint than the continuance of it. It is not, however, the less perceptible, that even at this time it was *restraint* that constituted the *general* rule, and that whatever instances of the exercise of the opposite *liberty* took place, were the result of so many *special* permissions, and constituted but so many *exceptions* to, and confirmations of the rule.

No. 11, II. p. 11. 6*th December* 1796. — "Although they every day saw that no obstacle was thrown in the way of the convict *who had got through the period of his transportation with credit and a good character*, but that he was suffered to depart with the master of any ship who would receive him, and a certificate given to him of his being a free man, yet, &c." By this it appears as plainly, that, among *expirees* themselves, there were *some* to whom the liberty of departure was refused, as it does that there were *others* to whom it was granted.

No. 12, Ib. p. 49. *September* 1797. — "As the masters were *seldom* refused permission to ship such as were free." From this passage it follows, that, at this time likewise, though there were but *few* instances, yet there were *some*, in which such permission was refused.

No. 13, Ib. p. 45. *August* 1797. — Sailed the Britannia and the Ganges. "The commander of the latter was *permitted* to take on board several convicts that had become free."

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No. 14, p. 125. *September* 1798. — Sailed the Barwell for China. "Her commander was *allowed* to receive on board about 50 persons, who had completed their period of transportation."

No. 15, p. 57. *October* 1797. — "Decreasing daily as did the number of working men in the employ of government, yet" [at this time it is stated that] "the governor *could not refuse* granting *certificates* to such convicts as had served their respective terms of transportation; and no less than 125 men were at this time certified by him to be free. Most of these people had no other view in obtaining this certificate than the *enabling them*, when an opportunity offered, *to quit the settlement*, or following their own pursuits till that time should arrive." *Could not refuse?* Why so? He had without any difficulty refused on the former occasions, mentioned in Nos. 1, 3, 4, 5, 7, 10: what was there to prevent him now? From hence it should seem, that by this time some legal scruples had arisen, in some breast or other, either in the colony or at home: and that from thence it was, in the first place, that the granting of the certificate, *at or about* the expiration of each man's term, was regarded as in some measure *obligatory;* in the next place, that the effect of such certificate, when obtained, was to confer on the individual the liberty of departure: — a *primâ facie* liberty at any rate, though probably subject at all times to revocation by special order.

No. 16, p. 298. *August* 1800. — "Several certificates were granted this month, to persons who had served their terms of transportation."

SECTION XIII.

EXPIREES, DURING DETENTION, KEPT IN A STATE OF BONDAGE.

No. 17, I. 74. *July* 1787. — Freedom from *bondage*, refused along with liberty of *departure*, on the same ground, viz. the want of evidence of the commencement of the term of servitude. See above, Nos. 1 & 2.

No. 18, I. 169. *July* 1791.—*Expirees*, who wished *not* to become settlers in New South Wales, ordered to work there for twelve or eighteen months certain. See No. 4.

No. 19, I. 208. *April* 1792. — Expirees "become numerous." To fourteen of them the choice of the place where they were to labour (where these *freemen* were to be *forced* to labour) is stated as an "*indulgence*."

No. 20, I. 474. *4th October* 1796. — *No expiree* was now *allowed* "*to remove himself* without permission *from the public work*. But, notwithstanding *this had been declared in public orders, many withdrew* themselves . . . . on the day of their servitude ceasing." *For this* "*they were punished, and ordered again to labour*."

No. 21, II. p. 22. *February* 1797. — "Several convicts who had served their respective terms of transportation, having applied to be discharged from the victualling books of the colony, and allowed to provide for themselves, it was determined that, *once during a given time*, certificates of their having so served their several sentences should be granted to them, together with the permission they solicited." — *Once during a given time: i. e.* once a-year, once a-quarter, or once a-month, &c., if the sense that presents itself to me is what was meant. This being the case, the time when each man was restored to liberty, was the time — not when his *right* to it commenced — not when *law* and *justice* required that he should be restored to it — but a time which recommended itself to the imagination, by some such idea as that of *order* and *regularity:* — at any rate, by some idea or other, which in the order of importance occupied in certain conceptions a higher rank than that of *law* and *justice*. What would be the feelings of the good people in England, if, by the influence of any such love of order on the mind of a secretary of state or sheriff, prisoners were in future to be discharged from prisons *here*, not as at present, when their respective terms are up, but in gangs together, say every quarter-day? so that a man, for example, whose sentence was for a month, should, for the sake of *good order*, be kept in jail three months longer, all but a day or two, if his month happened to end a day or two after quarter-day?

No. 22, Ib. II. p. 23. *March* 1797. — "It appeared by the *books*, in which were entered the *certificates* granted to the convicts who had again become *free* people, that there were at this time not less than 600 men off the store, and working for themselves in the colony: forming a vast deduction of labouring people from the public strength, and adding a great many chances against the safety of private and public property, as well as present security."

Legality (let it never be out of mind) is the object of inquiry here, not abstract *expediency*. So far as *security* and *economy* were concerned, legality and expediency seem to have been in a state of perpetual repugnance. *Legality* required that each man should be liberated from bondage the instant the time comprised in his sentence was at an end: *expediency* (had legality been out of the question) would perhaps have required that, in a society so constituted, he never should be discharged at any time.* But, as to the con-

* See Letters I. and II. to Lord Pelham. "And, (on the occasion just mentioned (No. 21,) of the expirees "who having withdrawn themselves from the public work immediately upon the ex-

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trivance for making the discharges in the lump, at fixed periods, it is not quite so apparent how *expediency* was *served* by it, as it is that *law* was *violated* by it. What a system! under which, in one way or other, it was impossible not to do wrong! in which *mischief*, in a variety of shapes—frequently, perhaps, *utter destruction*—would have been the consequence of anything like an exact conformity to the rules of *law!*

In a situation like this, the conduct of the *local powers* may on *each* occasion be, upon the whole, blameable or unblameable, as it may happen: but the *system itself*, under which they are *obliged* to act, what can it be, otherwise than blameable—blameable in the extreme—upon *all* occasions?

In all these transactions—in all this time—is it in the nature of the case, that the system of illegal detention, such as it is, should have been carried on in the penal colony, otherwise than in consequence of, and in general in conformity to, *instructions* received from home?

Much argument does not seem necessary to prove, that the difference between punishment of this sort for a limited term, and punishment of the same sort for life, was no secret to those by whom it was obliterated in practice. But by a particular fact a sort of impression will often be made, beyond any that can be made by general inference.

In September 1794, in a single page, an account is given of no fewer than sixteen convicts existing at one time (one, in from a hundred to two hundred or some such matter,) in whom symptoms of reformation had been *supposed* to be discovered.* The supposed penitents here in question were *non-expirees:* to different individuals amongst them, different and very carefully measured degrees of indulgence were extended. To one of them (William Leach) whose "term" under "his sentence of transportation" had been for seven years, of which term a part only had elapsed, "permission," it is stated, was given "to quit this country" (New South Wales:) but clogged with the condition of his not returning to England, so long as his "term" remained "unexpired."

Here, then, the punishment, we see, was analysed, and its constituent elements separated: the *confinement* to New South Wales, together with the species of *bondage* incident to it, was remitted: the *exile* was left, and for the whole time, in full force.

The written instruments, serving as evidences of the indulgences thus granted, are termed, on the occasion, "*warrants of emancipation:*" and to these warrants the "*seal of the territory*" (it is stated) was affixed. What was done on this occasion being done by so many *formal*, and of course (if anything like a *register* be kept there) *registered* acts, it seems difficult to suppose but that it must have been upon INSTRUCTIONS from government here—Instructions in some degree correspondent in point of formality—that they were grounded. If, under any such nice distinctions and guarded limitations, power was thus given for permitting individuals to quit the colony *before* the expiration of their respective sentences—given, therefore, in contemplation of the precise tenor of each law—is it supposable, that without INSTRUCTIONS equally deliberate, this large and continually-increasing proportion of the population (the expirees) should have been detained as they were detained, though against law, *after* the expiration of their respective terms?

Were the Court of Common Pleas to give judgment "in an appeal of death," they would be "*guilty of felony*,"—says Hawkins, B. I. ch. 28, § 5, p. 169, 8vo., with a legion of marginal authorities for his support.—*Guilty?* why guilty? Then comes of course a technical reason:† but the *rational* one, which it shades, is evident enough; because, without what is called *mala fides*—without *criminal consciousness*—consciousness of the want of right to do what they take upon them to do—an error of that description could never, by persons of that description, be committed.‡

piration of their terms of legal servitude, were punished and ordered again to labour")—"they seized," says the historian immediately after, "the first opportunity of running away." "We were well convinced," it is added, "that by *these people* and those who harboured them" [viz. the *expiree* settlers in general] "*every theft was committed.*" I. p. 474.

* It is almost the first discovery of the kind mentioned, and I believe quite the last: unless it be that in the instances of the few permissions of departure granted to *expirees*, the recognition of such a change may, as far as those instances go, be supposed to be included.

† "Because, these courts having no more jurisdiction over these crimes than private persons, their proceedings thereon are merely *void*, and without any foundation."

‡ Exile, confinement, and bondage—inflictions perfectly distinct—are the ingredients of which (as already noted) the complex punishment styled *transportation* is composed. It has been so at all times, and under both systems: though under the new system the two last-mentioned ingredients possess a degree of inflexibility, strongly contrasted with their laxity under the old. When the transportation was to America, the bondage might be bought off or begged off, in the whole or in any less proportion, by agreement with the assignee of the property in the convict's service:—the bondage, which was the principal infliction of the two; and with it all the accessory accompaniments. Under the new system, neither the one nor the other is remissible, but by the act of the agent of the crown, nor therefore (regularly at least) but upon public grounds. Under the new system, again, over and above the extraordinary degree of tension thus given to these two secondary branches of the punishment, the primary branch, the exile, has

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SECTION XIV.

STATUTES TRANSGRESSED BY THE LEGISLATION AND GOVERNMENT OF NEW SOUTH WALES.

THE acts of legislation, and other acts of government, that have been exercised in New South Wales, have thus been stated, in a general point of view, as being contrary to law. It remains to confront the several heads of transgression that have thus been manifested, with the several constitutional laws and principles of law, which in those several points have been transgressed and violated.

I. *Transgressions in breach of the Habeas Corpus Act—Penalties thereby incurred under the said Act.*

"And *for preventing illegal imprisonment*," says the act,* "*in prisons beyond the seas;* Be it further enacted . . . that no subject of this realm, that now is, or hereafter shall be, an inhabitant or resident of this kingdom of England . . . shall or may be *sent prisoner* . . . into ports, garrisons, islands, or places beyond the seas, which are, or at anytime hereafter shall be, within or without the dominions of his Majesty, his heirs and successors; and that every *such imprisonment* is hereby enacted and adjudged to be illegal; and that if any of the said subjects . . . hereafter, shall be *so imprisoned*, every such person . . . so imprisoned . . . may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment, in any of his Majesty's courts of record, against the person or persons by whom he or she shall be so committed, *detained*, imprisoned, sent prisoner, or transported, contrary to the true meaning of this act, and against all or any person or persons that shall *frame, contrive, write, seal, or countersign* any warrant or writing for such commitment, *detainer*, imprisonment, or transportation, or shall be *advising*, aiding, or assisting in the same, or any of them;† and the plaintiff in every such action shall have judgment to recover his treble costs besides damages, which damages so to be given shall not be less than five hundred pounds, . . . and the person or persons who shall knowingly *frame, contrive, write, seal*, or *countersign* any *warrant for such* commitment, *detainer*, or transportation, or shall so commit, detain, imprison, or transport any person or persons contrary to this act, *or be anyways advising, aiding, or assisting therein*, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England: and shall incur and sustain the pains, penalties, and forfeitures . . . provided . . . by the statute of provision and *præmunire*, . . . and shall be *incapable* of any *pardon* from the king."

To the provisions in this clause there are two exceptions, annexed by so many immediately succeeding clauses:—one, in respect of persons, by their own agreement in writing, contracting to be transported;‡ the other, in respect of persons praying to be transported;‖ as it seems they were allowed to do in some cases, as still in Scotland, to save themselves from severer punishment.

There are also *at present* as many exceptions as there are posterior statutes authorising transportation, these exceptions having for their extent that of the authority given in each case by each respective statute: but, forasmuch as by a statute authorising the crown to transport offenders for a term therein limited, no authority, either express or implied, is given to "detain" any such offender, in any case, a moment beyond such limited time, the provisions in the *Habeas Corpus act*

received a still more decided enhancement, by the addition made to the duration of it. For, supposing the *confinement* in the penal colony to be continued, as it always has been, to the legal end of each penal term (with or without the *bondage*, according to the fluctuating decision of the local despot,) it follows, that under the new system, by the mere change of local situation—I mean by the substitution of the superlatively distant, and comparatively inaccessible, territory of New South Wales, to the so much nearer and more accessible coasts of British America—an addition has thus been made to the exile—an addition which can never have been so little as four months, and may have amounted to years: and in future instances may at all times amount to any number of years.

In the case of those whose offences were prior, in point of time, to the year 1787, (the date of the act for the foundation of this colony,) this addition, though by that act rendered conformable to *law*, yet, not having anything like necessity for its justification, could not by any act be rendered conformable to *natural justice*.

Even in all *subsequent* instances, though the *injustice* was at an end, an addition of no small magnitude has been made, in this obscure and indirect mode, to the *severities* of the penal system. The severer the additional inflictions thus irregularly introduced, though in a manner not absolutely repugnant to law, the stricter, one should have thought, should have been the caution observed, to avoid adding, to the imputation of legal severity, the reproach of wanton and oppressive illegality and injustice. That the eyes of men in power were really more or less open to the distinctions thus confounded by their practice, is evidenced by the discriminations reported in the text.

* 31 C. II. c. 2, § 12.

† To the applicability of the *habeas corpus act* to the present case, the words "*sent prisoner*," "*such imprisonment*," and "*being so imprisoned*," furnish an objection, which it is easy enough to see, and, from the other words of the act, not very difficult to refute. The discussion has been drawn out at length, but would be too long for the present purpose.

‡ § 13. ‖ § 14.

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remain, in the instance of every convict so detained in New South Wales, in full force and virtue.

The several *acts* and *modes of participation*, by and in which a man may be a partaker in the crime of unlawful imprisonment, are here carefully enumerated and distinguished. As to *acts*, *commitment* is one; *detainer* is another. In the instance of the convicts, the *commitment* has *not* been unlawful: the *detainer*, after the expiration of their respective terms, has been, and still is. As to *modes of participation*, the description given of them will, I believe, be found sufficiently comprehensive. To appropriate them to this or that great person, in or out of office, would at present be an useless labour. The act has done its part: the books of the council board and the treasury — not forgetting the office of the secretary of state for the home department — these, with or without certain documents from the colony, and a little explanatory oral evidence, which need not be wanting, would do the rest.

It is almost superfluous to observe, that in intendment of law, every place, circumscribed or not by walls — every place in which, without sufficient warrant, a man is kept against his will — is, to this purpose — as for all purposes of justice it is most necessary that it should be — *a prison*.* If an island larger than all Europe were not to *this* purpose *a prison*, one of the two equally declared objects of the law would be defeated, and the whole text of it turned into a dead letter.

II. *Repugnancy of such Transgressions to Magna Charta, according to Coke and Comyns.*

Thus saith *common sense:* and — what, fortunately for the present purpose, is much more indisputable and decisive — thus saith *Lord Coke;* whose *comment*, though the parliamentary *text* of it be of so much earlier date, is not here inapposite: since the *Habeas Corpus act* — an act having *Magna Charta* for its *ground-work*, has for its *object* no other than the affording an additional protection to this part of the rights which, by that sacred trumpet of the constitution, had already been proclaimed. Step by step, the oracles of the legal sage will be found advancing to the point, and at length coming fully home to it.

1. "No man," says he, "shall be exiled, or banished out of his country; that is, *Nemo perdet patriam*, no man shall lose his country, unless he be exiled according to the law of the land.†

2. "No man shall be outlawed, made an *exlex*, *put out of the law;* that is, *deprived of the benefit of the law*, unless he be outlawed according to the law of the land."‡ Their time of lawful punishment being expired, the quondam convict inhabitants of New South Wales, by being kept here against their wills, are they not made "*to lose their country?*" and, by being thus *de facto* removed out of the reach of the remedial arm of justice, are they not "*put out of the law*," as effectually as if, after a wrongful judgment of outlawry pronounced against them, they had thus been deprived of the benefit of it *ipso jure*, i. e. *falso jure?*

3. "By this law of the land, no man can be exiled, or banished out of his native country, but either by authority of parliament, or, in case of abjuration for felony, by the common law."‖ In the instance of each of these convicts, there is a time for and during which he *has* been "*exiled by authority of parliament;*" and so far as it is only for and during this time that he is kept in New South Wales, so far there is no injury. But, after the expiration of this time, all the *rest* of the time during which he is kept there, he *is* kept "in *exile* and in *imprisonment, without authority of parliament*." He would be kept in *exile*, if, with the exception of this his native country, he had the choice of the whole world. But, besides being kept in *exile*, he is kept even, in most instances, in *imprisonment*, confined as he is to the insulated, however extended, region of New South Wales.

4. "This" [Magna Charta] "*is a beneficial law, and is construed benignly:* and therefore the king cannot send any subject of England, against his will, to serve him out of this realm; for, that would be an exile, and he should *perdere patriam:* no, he cannot be sent against his will into Ireland, to serve the king as his deputy there, because it is out of the realm of England: for, if the king might send him out of this realm to *any* place, then, under pretence of service, as ambassador, or the like, he might send him *into the furthest part of the world, which, being an exile, is prohibited* by this act."§ To send the meanest of these convicts to this "*furthest part of the world*," against his will, though it were to be governor there, would thus be an offence: an offence, in the first place, against *Magna Charta;* in the next place, against the *Habeas Corpus act*. These men, not *one* of whom Majesty itself could order to continue there, were it even to be governor there, against his will, these are the men whom, *by thousands*, his Majesty's ministers are keeping there *still* in bondage.

5. If "a felon . . . is under custody of the king's officer [it] is an imprisonment in law."§ He that is under lawful *arrest* is said to be *in prison*, although it be *not intra parietes carceris*.¶

6. "*Imprisonment* doth not only extend to

* Inst. 46, 589. † Inst. 46. ‡ Ibid.

‖ II. Inst. 47. § Ibid. ¶ II. Inst. 589.

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false *imprisonment*, and unjust, but for *detaining* of the prisoner longer than he ought *where he was at first lawfully imprisoned.*"*

7. "If any man, by colour of any authority, *where he hath not any in that particular case*, arrest or *imprison* any man, or *cause him* to be arrested or imprisoned, this is against the act; *and it is most hateful, when it is done by countenance of justice.*"

Had Lord Coke been a prophet as well as a lawyer, he could not have pointed more surely to the present case.†

III. *Transgressions in Breach of the Petition of Right*, 3 C. I. c. 1.

In this statute, among the petitions contained in § 10, after the recital that "commissions" had then of late been "issued forth" "for proceeding by martial law," is this—"That hereafter no commissions of like nature may issue forth to any person or persons whatsoever, to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be *destroyed*, or put to death, contrary to the laws and franchise of the land."

After this comes the concluding section (§ 11,) which is in these words:—

"All which they most humbly pray of your most excellent Majesty, as their *rights and liberties, according to the laws and statutes of this realm;* and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people, in *any* of the premisses, *shall not be drawn hereafter into consequence or example;* and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that *in the things aforesaid, all your officers and ministers shall serve you according to the laws and statutes of this realm*, as they tender the honour of your Majesty, and the prosperity of this kingdom. Quâ quidem petitione lectâ, et plenius intellectâ, per dictum Dominum Regem taliter est responsum in pleno Parliamento, viz. Soit droit fait come est desire."

In full contradiction to this statute, it appears from the journal of the Judge-Advocate, that, in April 1790, in New South Wales, by the governor of New South Wales, martial law was actually proclaimed.‡ In the *petition of right*, the territory on which the commissions thus branded with illegality had been executed, stands described by words of no greater amplitude, indeed, than the words "*this realm.*" Of *colonies* no mention is there made:—good reason why, no such dependencies being at that time in existence.‖ But, if the principles already laid down in this behalf are just, no just reason could be built on this ground, for regarding the *petition of right* as being in this point of view inapplicable to New South Wales. In the first place, what should hinder that settlement, though at the distance of the antipodes, from being considered as parcel of "*this realm?*" Not local distance: for this, as we have seen already, did not hinder the whole of the intended plantations in America from being parcel of the manor of East Greenwich. In the next place, among the petitions contained in the concluding section above quoted, is this—"That your Majesty will also vouchsafe to declare that the . . . proceedings to the prejudice of your people in any of the premisses shall not be drawn hereafter into consequence or *example;*" and moreover, "that *in the things aforesaid, all your officers and ministers* shall serve you according to the laws and statutes of this realm."

On this, as on all other occasions of *necessity*, real or apparent, I impute not any moral blame to the *governor:* moral blame might, for aught I know, have been imputable to him, had he acted otherwise.§ *Elsewhere,*

* II. Inst. 53.

† "Every restraint of the liberty of a freeman" (says the Abridgment of *Chief Baron Comyns*) "will be an imprisonment,"—"though it be in the high street, or elsewhere, and he be *not* put into any *prison* or *house.*" Besides the authority of *Lord Coke*, as above, he quotes two others (*Cro. Car.* 210; per Thorpe: Fitzh. Bar. 310.) I have them not at hand, nor is it material. Comyns is a channel that *adds* to the authority of the original source, instead of weakening it. And (what, if there could be a doubt, would render his interpretation a still more apposite one than any that could have been given by Lord Coke) Comyns wrote *after the Habeas Corpus act.*

They would both of them have expressed themselves more fully, though scarcely more intelligibly, if they had said—Every restraint of the liberty of locomotion, will be an *imprisonment:* every restraint upon the liberty of locomotion, on the part of a freeman, *i. e.* of a man free from such restraint by law, will be an act of *false imprisonment.*

‡ "The Lieutenant-governor, immediately after the loss of the Sirius, called a council of all the naval and marine officers in the settlement, when it was unanimously determined that martial law should be proclaimed; that all private stock, poultry excepted, should be considered as the property of the state; that justice should be administered by a court-martial to be composed of seven officers, four of whom were to concur in a sentence of death . . . . The day following, the troops, seamen, and convicts, being assembled, these resolutions were publicly read, and the whole confirmed their engagement of abiding by them, by passing under the king's colour, which was displayed on the occasion." Collins, I. 104.

‖ Charters had been obtained, as above, and in a certain degree acted upon; but any settlement, understood to be a permanent one, had scarce as yet been made.

§ In a passage in the third Institute, written without mention of the petition of right, and therefore it may be presumed before the passing of it, "If a lieutenant," says Lord Coke, "or other that hath commission of martial authority, in time of peace, hang, or otherwise execute, any

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however — I mean to his Majesty's "officers and ministers" here at home — I see not how it can be that moral blame should not be imputable: I mean, if, under *constitutional* blame, *moral* be included — if a regard for the constitution of their country — for the "*laws and statutes according to which*" they are thus pledged "*to serve*" their royal master — have any sort of place among the articles of their moral code. Amongst the documents which composed the legal armature of the governor, was any such power as that of declaring martial law, in that nursery of despotism, included? If so, then has there been, in that behalf, on their part, an open and point-blank breach made in this constitutional and hard-earned bulwark of the constitution. Again, be this as it may, when with or without precedent authority, from these his Majesty's "officers and ministers," martial law had *actually* been proclaimed, was information of such proceeding officially transmitted to them in consequence? That, in one way or other, at one time or other, information of this fact has come to their cognizance, is beyond dispute: if not by the next conveyance, and in the way of official correspondence (an omission not naturally to be presumed,) at any rate it was received by them in 1798, through the medium of the press. It is therefore at any rate with their knowledge that the petition of right has thus been violated. On the occasion of this, any more than of so many other exercises of unconstitutional powers, have they ever condescended to apply to parliament — I do not say for *precedent* authority — but so much as for an *ex post facto* indemnity? Not they indeed: no, not in any one of the multitude of instances that have called for indemnity at least, if not for punishment.

IV. *Transgressions in Breach of the Declaration of Rights.*[*]

This statute, so familiar to English ears, and once at least so dear to English hearts, under the name of the *Bill of Rights*, opens with the recital of twelve heads of transgression, "whereby the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert . . . the laws and liberties of this kingdom."

Of those *twelve* heads of royal transgression, of which in those days *England* had been the scene, *seven* at least present themselves, as having had their counterparts in *New South Wales:* with this difference, that, in the most material instances, the transgressions that at that time gave birth to the Revolution in this our island were but peccadillos in comparison of the enormities acted on that distant theatre. In England, the subversion was but attempted: at the antipodes it has been completed — complete in design, from the first moment — completed in the execution, so soon as occasion called for it: the subversion of English liberties having been the very object and final cause of the foundation of this English colony. The words of the clause, which it became necessary to copy, present another difference, but happily too striking a one to every loyal eye to require any further mention of it.

No. 1. *Transgression the 1st in England.* — "By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament."

Analogous Transgression in New South Wales. — Exercising legislative power by the hand of the governor there, without authority from parliament, in an habitual train of enumerated instances, to the number of sixty or seventy, or upwards, as already exemplified in § 10: besides other instances, not as yet specifically ascertainable. The word *analogous* requires correction. It is evident enough how inconsiderable the transgression is which consists in the mere act of *dispensation* or *suspension*, put upon here and there a law already existing, in comparison of an habitual and *positive* exercise of an illegal power of legislation, *in all cases.*

No. 2. *Transgression 2d in England.* — "Committing and *prosecuting* divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power of suspending and dispensing with laws."

Analogous Transgression in New South Wales.—Confining within this land of illegal bondage, and even *without* "*prosecution*," punishing by arbitrary power, viz. with whipping—divers persons formerly guilty, but who had been restored, in point of law, to the condition of innocent persons, by the expiration of their terms of legal punishment.†

No. 3. *Transgression 3d in England.*— "Issuing and causing to be executed, a *commission* under the Great Seal for erecting a *court* called the Court of Commissioners for Ecclesiastical Causes."

Analogous Transgressions in New South Wales.—1. Instituting a court called a *civil court*, without authority from parliament.‡

2. Punishing divers persons, on divers occasions, in divers manners, by the single authority of the governor, for pretended offences created by so many acts of legislative authority exercised by the governor: for ex-

man by colour of martial law, this is murder; for this is against Magna Charta, cap. 39. . . and here the law implieth malice." The law and Lord Coke may imply malice as they please: in a case such as that before us, God forbid I should be malicious enough to imply it!

[*] 1 W. III. Sess. 2, c. 2.

† Supra, § 12. ‡ Coll. I. p. 7.

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ample, in some instances, by destroying stills,* pulling down houses,† destroying oars. These, though on the mention of them presenting the appearance rather of "outrages" committed by individuals, were among the acts done by the governor in the exercise of these illegal powers.

No. 4. *Transgression the 4th in England.* —"Levying money to and for the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted in parliament."

Analogous Transgression in New South Wales.—Levying for the use of the crown a tax of 6d. per bushel on corn, and other taxes, applied towards the expense of building a jail at Sydney.‡

No. 5. *Transgression the 7th in England.* —"Violating the freedom of election of members to serve in Parliament."

Analogous Transgression in New South Wales.—Legislation, exercised by the governor alone, without authority from parliament at home, or the concurrence of any assembly, standing in the place of parliament, in New South Wales.

No. 6. *Transgression the 10th in England.* —"Excessive bail . . . required . . . to elude the benefit of the laws made for the liberty of the subject."

Analogous Transgression in New South Wales.—Married men, whose terms were expired, not suffered to quit the colony, without *finding security* for the maintenance of their wives and children, if left behind.‖

No. 7. *Transgression the 11th in England.* —"Illegal and cruel punishments inflicted."

Analogous Transgression in New South Wales.—Perpetual exile, accompanied with perpetual confinement and perpetual slavery, inflicted on his Majesty's subjects, altogether without cause; whatever offences they had been convicted of, having been previously expiated by appropriate lots of punishment, marked out by law. Of the mere endeavour to escape from this combination of illegal and cruel punishments — the humble and peaceable endeavour without anything like *force* — an additional lot of illegal punishment, illegal whipping, was the appointed consequence.

Under this head, the enormities imputed to James the Second were mere peccadillos, in comparison of the more palpably "*illegal*," more "*cruel*," and above all prodigiously more numerous enormities of the like complexion, committed under ———— My pen refuses to complete the sentence.§

After the statement of the several heads of *transgression* by which the rights in question had been *violated*, the act proceeds to declare the *rights* themselves in certain articles, the first of which is in these words: "The pretended power of *suspending* laws, or the execution of laws, by regal authority, without consent of parliament, is illegal."— But, if simple *suspension* or *dispensation* — (*i. e.* abrogation for a time in individual instances) be thus illegal, how much more flagrant must be the illegality of *positive* enactment, and that without any limitation as to the nature of the case?

In § 64, after declaring the rights and liberties in question to be "the true ancient and indubitable rights of the people of this

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* Coll. I. 450. † Ib. 300, 471, 482.

‡ Coll. II. 41, 214, 283, 297.

‖ The reasonableness of the obligation, supposing the imposition of it had been guarded from abuse by proper checks, and warranted by law, can never amount to a justification of such an act of coercion, limited as it was by no such checks, and sanctioned by no such warrant. And whence came the pretence for imposing it? From the very act of those who, in bringing forward any such plea, must *take advantage of their own wrong*, ere they could avail themselves of it. By that conjugal affection, by which these poor females were in a manner compelled to avail themselves of the means afforded them for sharing in the exile of their husbands, they were enticed into this *cage*; and, out of the *physical* bar, which *there* opposed itself to the return of the females, a legal bar was *thus* constructed, for preventing the return of both sexes, males as well as females.

§ The most striking, of the few instances of inordinate punishment that could have been alluded to in this article of the bill of rights, was the whipping (certainly a most severe one) of *Titus Oates*. But the crime for which Oates thus suffered was but *one*, in a system of murders of a most terrific and atrocious complexion,— murder by the hand of justice, though left out of that denomination in the early and dark ages of our law. It would have required the united enormities of a dozen or a score of the most guilty among the colonists of New South Wales, to make up a mass of guilt equal to that which issued from this one murderous tongue.

In point of *illegality*, the utmost that can be alleged, against the penal inflictions thus condemned by the Bill of Rights, is an excess — on the side of severity indeed, but in the exercise of a power plainly discretionary, and having by law no specific limits: in the case of the modern system of illegal punishments, the legal portion had in every instance been marked out by the clearest limits: and it is by the palpable transgression of these limits, and by a course of contempt, as direct and pointed as it is possible to manifest, towards the repeatedly declared will of the supreme power by which these limits had been marked out, that the enormities, thus censured by the ancient constitution, have been committed in these our days.

In point of *multitude* of transgressions, for every instance of punishment, in respect of which illegality could thus have been imputed to the penal system of that time, a hundred at least might be found, of the more cruel and more palpably illegal masses of punishment, with which the administration of penal justice has thus been stained.

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kingdom," the act concludes with "declaring and enacting," that "*all officers and ministers whatsoever* shall serve their Majesties and their successors *according to the same in all times to come.*"

The wretches in question, whatever may have been their crimes, were they not—are they not still, and as truly as the very best of their betters, so many individuals of "*the people of this kingdom?*" And thus it is, then, that his present Majesty, the venerable and beloved successor of the royal founders of these rights and liberties, has been "*served*" by "*the officers and ministers of his time:*" thus it is, that the "*ancient and indubitable rights*" of this helpless and defenceless portion of his people, have been respected and protected by these his "officers and ministers."

IV. *Transgressions in breach of the several Transportation Acts, by which that Punishment has been appointed for limited lengths of time.*

It would be a double charge of the same article, to state these as so many acts of delinquency, distinct from, and over and above those already referred to, in their character of transgressions against the *Habeas Corpus act.* It is by these several statutes, that the limits of legal punishment are marked out, in the several respective instances; it is in the transgression of those limits in each instance that consists the violation offered to that sacred law.

It would, moreover, be a waste of paper to give, by a string of references, a specific list of the several particular laws thus transgressed: it would be making so many useless transcripts, from the already existing indexes and abridgments.

In this complicated body of enormity, perspicuity requires that the distinction between the two main branches be kept in view. The one consists in the system of groundless, as well as illegal punishment; the other in the system of illegal legislation and government:—the former, in the oppression exercised upon individuals; the latter, in the usurpation exercised by the servants of the crown over the authority of parliament:—the former, in the wound given to the penal branch, and through that alone to the constitutional branch of the law; the other in a system of delinquency, striking more directly against the constitutional branch. The relation of the latter system of transgression to the former, is that of a *means* to an *end:* it was for the purpose of the oppression exercised upon individual subjects, that the authority of his Majesty in parliament was thus usurped by his "officers and ministers."

One thing, in regard to the question of *law,* requires particularly to be observed: which is, that though the right of the crown to legislate in this new-founded colony, without the concurrence, either of the two other estates of the supreme legislature in the mother country, or of a subordinate assembly of states in the colony, were as clear as, I flatter myself, the contrary has been made out to be, the stain of illegality would not even thus be cleared away: for, admitting, on the part of the King's governor of New South Wales, the right of legislating to every other effect imaginable, even then no such supposition could be entertained, consistently with any sort or degree of supremacy on the part of parliament, as that of a right of making ordinances in New South Wales, in direct repugnancy to the several acts of parliament, by which express limitations stand annexed to the several lots of punishment respectively appointed by those acts. And as to the *Habeas Corpus act,* should even the letter of that sacred charter be (as I can scarce conceive it to be) deemed not to have been violated, the violation of the spirit of it would still remain as plain and palpable, as it could have been in any of the cases, the experience of which may be supposed to have given occasion to the law.

As to everything that concerns *motives* and *extenuations*—*motives* by which any of the transgressors may be supposed to have been led into transgression—extenuations that may be supposed capable of being grounded on those motives—discussions on any such topics as these, might in the present state of the business be regarded as premature. The essential subject of solicitude is the Constitution: the essential operation is the healing the wound that has thus been given to it: that object being accomplished by the requisite votes and laws, everything else may in comparison be deemed of light importance; and may without much danger be left to float upon the tide of popular and party favour. The object on no account to be lost sight of is *futurity:* that being provided for at any rate, it is a matter of little comparative moment what degree of indulgence may accompany the retrospect, which cannot altogether be omitted to be taken of the *past.* The fact of transgression, declared, then would come the consideration of the censure, if any, and the deductions or set-offs to be made, on the score of motives, intentions, or past services, real or supposed, in other lines. All would be lost—the constitution would be betrayed and sacrificed—if, dazzled by the lustre that circles the head of this or that arch-delinquent, the eye of parliament were to show itself insensible to the distinction between right and wrong, and the quality of the criminal were to be accepted as a warrant for the crime. It was not in the case of James the Second—it was not in the case of that

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misguided, yet most religious, though so unhappily religious king: it saved him not from forfeiture, much less from verbal censure. It remains to be seen, whether the constitution, which, in the seventeenth century, even a king was punished and expelled for violating, is to be complimented away, and made a sacrifice of, to the pride of this or that domineering subject, in the nineteenth century—in this maturer age, in this supposed period of constitutional improvement, and more firmly established rights.

Compare the case of this immense, yet too real, because uninspectable Bastile, with that of the scene of kindred abuse in miniature,—the home-jail thus hyperbolized and stigmatized—in *Coldbath Fields*. See what was the conduct of parliament in the one case, and from thence say what it ought to be—what, if consistency be the rule, it cannot but be in the other. Information to parliament of mismanagement in a prison—a lawful prison—employed as such under the law for the suspension of the Habeas Corpus act. No principle of the constitution violated—no authority setting itself up to make ordinances repugnant to the laws, and subversive of the authority of Parliament. The alleged cause of the abuse, malpractices on the part of a single jailor, negligence or connivance on the part of certain magistrates, his official superiors. On this ground—on this single ground—an address is presented to his Majesty by the House of Commons, for an inquiry into the management of this jail; an address presented with the express concurrence of the chancellor of the exchequer; and a commission of inquiry is issued accordingly—issued by the crown,* and executed.†

On the present occasion, his Majesty's subjects kept by hundreds, ere now, perhaps, by thousands, in a state of exile and bondage, without end and without cause: the four grand bulwarks of the constitution all broken through, for the very purpose of this causeless and endless punishment; the authority of parliament treated by the servants of the crown with a contempt already become habitual and rooted:—is the supposition so much as an endurable one, that after information thus exhibited, though it be by so obscure a hand, parliament should sit still and silent, exactly as if nothing amiss had ever happened?

When on that occasion the motion was made for the address, the delicacy of the chancellor of the exchequer of that day would not suffer him to refuse his declared concurrence with it.‡ Would the supposition be so much as a decent one, that the Chancellor of the Exchequer of the present day would show so little respect to the precedent thus set by his predecessor, as to refuse to the very vitals of the constitution that attention which it was then not thought decent to refuse to the police of one of the prisons.‖

* 2d September 1800; printed by House of Commons. Order dated 18th December 1800.

† Report of commissioners, dated 1st November 1800; printed as above.

‡ Parliamentary Register, 22d July 1800.

‖ Without a thought of any application to existing circumstances, I happened but now to open the reign of Charles I., in *Hume*. If prejudices of any kind be deemed imputable to that prince of historians, they will hardly be of that cast, which would dispose a man to exaggerate the mischief resulting from a transgression of the limits prescribed by the constitution to the power of the crown. Whether to that dispassionate, acute, and comprehensive mind, the wounds given to the constitution on the ground of the penal colony would have presented themselves as matters of indifference—as incidents in which the body of the people have no concern—is a question, the answer to which may be read, I should suppose, without much difficulty, in the following passages:—

Vol. VI., 8vo, p. 316, anno 1637. Speaking of ship-money, "What security," say the arguments which he exhibits as conclusive, "what security against the further extension of this claim? ... Wherever any difficulty shall occur, the administration, instead of endeavouring to elude or overcome it by gentle and prudent measures, will instantly represent it as a reason for infringing all ancient laws and institutions: and if such maxims and such practices prevail, what has become of national liberty? What authority is left to the *great charter*, to the *statutes*, and to that very *petition of right*, which in the present reign had been so solemnly enacted by the concurrence of the whole legislature?" So far Hume. The breach of those two constitutional safeguards constituted in those days, according to the historian, the superlative of tyranny. The *Habeas Corpus act* and the *Bill of Rights* have since been added. To triumph over those more ancient laws, the violation of which cost Charles the First his crown and life, was not enough: the violation of the Habeas Corpus act, and the Bill of Rights—a course of systematic violation persevered in for fourteen years—has accordingly been added to the triumphs of ministers in these our times.

Along with those two fundamental laws, other "statutes" are mentioned by the historian in general terms: and, as an aggravation of the tyranny, the *then* present reign is noted as the period that gave birth to the *Petition of Right*, one of those two fundamental laws. Statutes of inferior account, in crowds, contribute to swell the triumph obtained over law (with grief I say it) in the *now* present reign: and among them the several *transportation acts*, to which, in numbers too great for reference, this same reign has been giving birth.

Ib. p. 314, anno 1637.—"It was urged," ... continues the historian, "that the plea of necessity was in vain introduced into a trial at law; since it was of the nature of necessity to abolish all law. ..." p. 315. "And as to the pretension that the king is sole judge of the necessity, what is this but to subject all the privileges of the nation to his arbitrary will and pleasure? To expect that the public will be convinced by such reasoning, must aggravate the general indignation, by adding, to violence against men's per-

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sons, and their property, so cruel a mockery of their understanding."

Ib. p. 421, anno 1641.—"In those days," observes the historian, "the parliament thought"—and according to him—"justly thought that the king was too eminent a magistrate to be trusted with discretionary power, which he might so easily turn to the destruction of liberty. And in the event it has hitherto been found, that, though some sensible inconveniences arise from the maxim of adhering strictly to law, yet the advantages overbalance them, and should render the English grateful to the memory of their ancestors, who, after repeated contests, at last established that noble, though dangerous, principle." Established it? So *they* thought (it seems) in *their* times: so Hume thought (it seems) in *his* time. In these *our* times, does that valuable principle *remain* established? or, after having been overthrown and trampled upon for these fourteen years, is it now finally to be abandoned, and to remain lifeless and extinct for ever?

In one point, indeed, at least according to the view given of it by this historian, the parallel would be found to fail. "The imposition of ship-money, independent of the consequences," (viz. the anti-constitutional consequences above spoken of) "was a great and evident advantage to the public," viz. "by the judicious use which the king made of the money levied by that expedient."

Ib. p. 319, anno 1637.—So far as to the unconstitutional impost of *that* day. As to the anti-constitutional system of the present times, what degree of "judiciousness" there was, either in the design of it or in the "*use*" made of it, may be seen in the Letters to Lord Pelham, by any man when conscience will permit him to look the subject in the face.

Ib. p. 360, anno 1640.—"The lawyers had declared, that *martial law* would not be exercised, except in the presence of the enemy; and because it had been found necessary to execute a mutineer, the generals thought it advisable, for their own safety, to apply for a pardon from the crown."—So much greater was the respect paid to the constitution by the king's servants—Strafford of the number—in those days, than in these. See above.

Ib. p. 319, anno 1587.—The cause of the unfortunate pertinacity on the part of the misguided king, and the deceitful ground on which it rested, are thus delineated. "Though it was justly apprehended, that such precedents, if patiently submitted to, would end .... in the establishment of arbitrary authority; Charles dreaded no opposition from the people, who are not commonly much affected with consequences, and require some striking motive to engage them in a resistance to established government."

Such at that time had been the *reliance*, but now follows the *result*.

Ib. p. 317, anno 1637.—"Hampden, however," observes the historian, "obtained by the trial the end for which he had so generously sacrificed his safety and his quiet: the *people* were roused from their lethargy, and became sensible of the danger to which their liberties were exposed. Then national questions were canvassed in every company; and the more they were examined, the more evidently did it appear to many, that liberty was totally subverted ... slavish principles, they said, concur with illegal practices; ... and the privileges of the nation, transmitted through so many ages, secured by so many laws, and purchased by the blood of so many heroes and patriots, now lie prostrate at the feet of the monarch. What though public peace and national industry increased the commerce and opulence of the kingdom? This advantage was temporary, and due alone, not to any encouragement given by the crown, but to the spirit of the English, the remains of their ancient freedom. What though the personal character of the king, amidst all his misguided counsels, might merit indulgence, or even praise? He was but one man; and the privileges of the people, the inheritance of millions, were too valuable to be sacrificed to his prejudices and mistakes."

Ib. p. 375, anno 1640.—The jealousy of the people was roused; "and, agreeably to the spirit of free governments, no less indignation was excited by the view of a violated constitution, than by the ravages of the most enormous tyranny." Such was the language—such the spirit—of the people of that day: such their language and their spirit, when both as yet were temperate, and had not burst forth into the wild explosions that ensued. In the case of New South Wales, *both* provocations—the "*violated constitution*," and the "*enormous tyranny*"—go hand in hand: the tyranny, the end; the violation of the constitution, the means. What will now be the spirit of a British parliament? what will now be the spirit of the British people? It remains to be seen in what degree, if in any, the people of this day retain the virtues of their ancestors.

They must be degenerate indeed, if they are to be lulled into any such persuasion, as that the constitution will be capable of retaining for their benefit its protecting force, after it has been made apparent, that, with ultimate impunity, it may thus be trampled upon in the most vital parts of it, for such a course of years.

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DRAUGHT OF A CODE

FOR THE

ORGANIZATION OF THE JUDICIAL ESTABLISHMENT

IN

FRANCE:

WITH

CRITICAL OBSERVATIONS ON THE DRAUGHT PROPOSED BY THE NATIONAL ASSEMBLY COMMITTEE,

IN THE FORM OF

A PERPETUAL COMMENTARY.

BY JEREMY BENTHAM,
OF LINCOLN'S INN, ESQ.

MARCH 1790.

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DRAUGHT OF A CODE

FOR THE

ORGANIZATION OF THE JUDICIAL ESTABLISHMENT.

TITLE I.

OF COURTS OF JUSTICE IN GENERAL.*

ART. I. — THE fountain of justice is *the nation, through the channel of the legislature.* Justice shall not be administered in the name of *the king*, or any other single person.

ART. II. — The judges shall in general be elected by the persons subject to their jurisdiction; and that in manner hereinafter specified.

ART. III. — No office conferring judicial power, *or the exclusive privilege of ministering by particular services to the exercise of such power*, shall be created *by the sole authority of the king for any purpose, much less* in order to be sold.

ART. IV. — Justice shall be administered gratis. Provision shall be made for the ministers of justice by salaries. *All exaction, or acceptance of fees, by persons any way concerned in the administration of justice, is hereby declared illegal.*

ART. V. — *All stamp-duties or other duties upon law proceedings are hereby abolished: and all laws made to ensure the collection of such duties, are so far forth repealed.*

ART. VI. — The judges have no share in legislative power. Appointed for the express purpose of enforcing obedience to the laws, their duty is to be foremost in obedience. Any attempt on the part of a judge to frustrate or unnecessarily to retard the efficacy of *what he understands to have been* the decided meaning of the legislature, shall be punished with forfeiture of his office.

ART. VII. — *But rules of law derivable from decrees of judges and customs of courts in times past, shall still be in force, so long as they remain unsuperseded by acts of the legislature.*

ART. VIII. — No judge has any power to make general regulations; *not even relative to the mode of procedure in his own court.*

ART. IX. — *But should any case arise before a judge, in respect of which it appears to him that the legislature, had the same been in their contemplation, would have made a provision different from that which the letter of the law imports, he is hereby authorised, and even required, so to deal therein as it appears to him that the legislature would have willed him to do, had such case been in their contemplation: taking such measures withal, whether by exacting security, or sequestration of goods or persons, or otherwise, as shall be necessary to prevent the happening of any irremediable mischief in either event, whether the legislature abide by the law, or alter it.*

ART. X. — *The suspensive power hereby given extends even to such laws and other acts of authority as shall have issued from the National Assembly, or from any subordinate authority, at any period posterior to that of the convocation of the present National Assembly: and it may be exercised with still less reserve with regard to such former laws and rules of law as, though not expressly abolished, may appear unconformable to the principles manifested by the National Assembly, and especially to those contained in the declaration of rights.*

ART. XI. — *Provided always that the judge, as soon as possible after the case calling for the exercise of such suspensive power has presented itself to his notice, shall make report thereof to the National Assembly.*

ART. XII. — *Copies of such report shall also be sent to the several courts of justice to which his court is subordinate: so that the dispatching of the original report be not de-*

* In this Title and Title II. the passages in italics point out the principal differences between this Draught and that of the Committee of the National Assembly of France, delivered in 21st December 1789. In the other Titles, the difference being total, italics would have been of no use. [Although a great part of this Draught is repeated, for comparison with that of the Committee of the Assembly, and for comment, yet as a considerable portion (Titles from 4 to 10 inclusive, 14 and 15) is not repeated, and there are other variations, it is thought best to reprint the draught at length, as first published.]

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layed on account of the dispatching of such copies.

ART. XIII.—*In such report shall be contained—*

1. *A statement of the matter of fact which has happened to call for the execution of the law.*

2. *A quotation, with proper references, of the passage of law in question.*

3. *A statement of the mischief which in his conception would ensue, were the letter of the law to be observed.*

4. *A statement of the course provisionally taken by him for avoidance of such mischief, in pursuance of the power given him by Art. IX.*

5. *To such report he is at liberty, and is hereby invited, to subjoin a note of such alteration in the text of the law, as appears to him most proper for guarding against the mischief in question for the future; whether such alteration consist in defalcation, addition, or substitution; pointing out the very words in which the passage in question, after the alteration suggested, ought to stand.*

ART. XIV.—*The true and only proper object of inquiry in the exercise of this suspensive power, as far as it regards laws posterior to the convocation of the present National Assembly, is, not what* ought *to have been the intention of the legislature in the case in question, but only what would have been so, had the same been present to their view.*

ART. XV.—*All judges and other ministers of justice are also hereby invited to make report, at any time, of any inconvenience which appears to them likely to ensue from the literal execution of any article of law, even although no case calling for such execution shall have yet arisen: as also to propose questions relative to the import of any passage in the law, which may have appeared to them ambiguous or obscure.*

ART. XVI.—The subordinate representative assemblies, in the exercise of the powers of administration, and *subordinate legislation*, lodged in their hands by the supreme legislature, are [not?] accountable to the judicial power. The members of them cannot therefore be punished, or cited to appear before it, for any act done by them in their quality of members. *Obedience to an act of any such assembly, acting within the sphere of the authority committed to it by the sovereign legislature, is to be enforced by the courts of justice in like manner as to an act of the National Assembly itself. But for that purpose, it is necessary that the courts of justice should take cognizance, upon every occasion, of the question, whether in such instance the subordinate assembly has or has not confined itself within its proper sphere, and to decide accordingly upon the validity of their act.*

ART. XVII.—The judges, elected as *in manner hereafter ordained*, shall enjoy their offices for life, *unless divested thereof in manner hereinafter specified.*

ART. XVIII.—*Judicial proceedings, from the first step to the last inclusive, shall, in all cases but the secret ones hereinafter specified, be carried on with the utmost degree of publicity possible.*

ART. XIX.—Every subject has a right to plead his own cause, in every stage, and before every court, as well by word of mouth as in writing; *and as well by himself as by the mouth or hand of any person of his choice, not being specially debarred by law.*

ART. XX.—*All monopoly of the right of selling advice or service in matters of law (saving provisionally the profession of a notary) is abolished. Any advocate may practise in the capacity of an attorney; any attorney, in the capacity of an advocate; and any man, not specially debarred, in the capacity of either.*

ART. XXI.—*In every suit, civil as well as penal, both parties shall attend in person at the commencement of the cause, in presence of each other and of the judge (unless in as far as they may stand excused by special reasons, in manner hereinafter specified); and so from time to time during the continuance of the cause; there to depose, and to be interrogated, at any time, they or their representatives, each on the part of the other, in the same manner as witnesses.*

ART. XXII.—All privilege in matters of jurisdiction stands abolished. All subjects stand henceforward upon an equal footing, in respect, as well of the manner of pleading, *and the order in which their causes are to be heard and decided*, as of the choice of the courts before which they are to plead.

ART. XXIII.—The constitutional order of jurisdiction shall not be disturbed, nor the subject drawn out of his natural court by *royal* commissions, or attributions of causes, or arbitrary evocations.

ART. XXIV.—*Resolved*, That this Assembly will, with all convenient speed, proceed to the enactment of a law to determine in what cases, and how, the power of evocation may be lawfully exercised.

ART. XXV.—*Resolved*, That this Assembly will proceed with all possible expedition to frame a new code of Procedure, of which the object shall be to render the administration of justice as simple, as expeditious, and as little expensive as possible.

ART. XXVI.—*Resolved*, That this Assembly will proceed with all possible expedition to frame a new code of Penal Law, of which the object shall be to render the punishments in every case as proportionate, as mild, and as apposite, as possible; never losing sight of the maxim, that every *lot or degree of* punishment which is not necessary, is a violation

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of the rights of man, and an offence committed by the legislator against society.

TITLE II.

DISTRIBUTION AND GRADATION OF THE COURTS OF JUSTICE.

ART. I.—In every *parish* [or canton] there shall be a court of justice of *immediate jurisdiction, under the name of the Parish Court,** *composed of a single judge; saving such consolidations or divisions of parishes, as may be made for this purpose, in virtue of the powers hereinafter given.*

ART. II.—In each district there shall be a court of justice of immediate jurisdiction, under the name of the *immediate* DISTRICT COURT, *composed in like manner of a single judge.*

ART. III.—*In each district there shall also be a Court of Appeal, under the name of the District Court of Appeal, composed in like manner of a single judge.*

ART. IV.—[In each department there shall be a COURT *of Appeal*, under the name of the DEPARTMENT COURT, *composed in like manner of a single judge.*] [*Quære, the necessity of this court?*]

ART. V.—At Paris there shall be a Court of Appeal, in the last resort, under the name of the *Metropolitan*, or SUPREME *Court, composed in like manner of a single judge.*

ART. VI.—The decrees of the Metropolitan Court of Justice shall be final, *except such on account of which censure shall have been past on the judge by a decree of the National Assembly, in manner hereinafter specified.*

ART. VII.—*To each of the several classes of courts above mentioned is given authority over all sorts of persons, and in every sort of cause, throughout the kingdom; saving only, the difference between jurisdiction immediate and appellate, and the authority of certain tribunals of exception, in as far as the same is hereby acknowledged, and provisionally confirmed.*

ART. VIII.—*These are,* 1. *Courts-Martial in the land service; in as far as the powers of such courts are confined to the maintenance of discipline among military men.*

ART. IX.—2. *Naval Courts-Martial; in as far as their powers are confined to the maintenance of discipline among men engaged in the naval department of the public service.*

ART. X.—3. *Causes relative to matters happening at sea, on board private vessels, belong to the jurisdiction of the courts of any territory where the vessel is in harbour;* viz. *to the immediate courts, if no regular judgment has been passed in virtue of any lawful authority on board the vessel; or, if there has, then to the courts of appeal.*

ART. XI.—4. *Courts Ecclesiastical; in as far as the powers of such courts are confined to the maintenance of ecclesiastical discipline among ecclesiastical men.*

ART. XII. 5.—*All representative assemblies; for the purpose of putting a stop to, and punishing offences committed by members or others, in face of the assembly.*

ART. XIII.—*All courts, other than the tribunals of exception, as above specified, shall be comprised under the common appellation of* Ordinary Courts.

ART. XIV.—*In* every *ordinary court* [*but the parish court, and in every parish court where there is a judge specially appointed, as in Tit. V.*] *there shall be a Pursuer-general and a Defender-general.*

ART. XV.—*Attached to the authority of the judge, as well as to that of the pursuer-general and defender-general of every ordinary court, shall be the power of appointing substitutes, or* deputies, viz. *one* permanent *and* occasional *ones as occasion may require.*

ART. XVI.—The name of *Advocate-General*, or *Public-Advocate*, shall be common to pursuers and defenders general; and the name of *Magistrate* to judges, advocate-generals, and the permanent deputy of each.

TITLE III.

OF JUDGES OF THE ORDINARY COURTS.*

§ I. *Appointment—Continuance in Office—Power and Rank.*

ART. I.—A [Judge[a]] (principal) shall be elected by the electors chosen by the active citizens of the territory over which he is to be [judge,[a]] in the same manner as a member of the administrative body of that territory; parochial [judges[b]] excepted, of whom in Tit. V., and metropolitan [judges.[b]]

ART. II.—On the first election, to be eligible to this office, a man must be seven and twenty years of age, and must have exercised the functions of a man of law, for three years

* The difficulty of deciding between *Parish* Courts and *Canton* Courts, and between the adoption and rejection of the *Department* Courts, necessitated, in some parts of this draught, a latitude of expression, and thence a sort of obscurity, which would not otherwise have had existence. At a period, too late for the requisite alterations, I am become clear in my own mind against the *Department* Courts, and the question, as between *Parish* and *Canton* Courts, depends upon local considerations, not within my reach.

* With the variations indicated by the ensuing notes, the contents of this will serve for Tit. XI. Of PURSUER-GENERALS, and Tit. XII. Of DEFENDER-GENERALS.

[a] { PURS. GEN. Pursuer-General.
{ DEF. GEN. Defender-General.

[b] { PURS. G. Pursuer-Generals.
{ DEF. G. Defender-Generals.

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in a superior court, or for five years before an inferior tribunal.[c]

Under the denomination of Men of Law, are comprised, for this purpose, 1. Judges of every description; 2. King's advocates and attornies, and their substitutes; 3. Advocates; 4. Attornies; [5. Secretaries of courts? *Greffiers?*] [6. Notaries?]

ART. III. — No vacancy in any [judicial office[d]] but the lowest shall be filled, but out of the same rank of [judges,[b]] or that next below: but [judges[b]] in those ranks all over the kingdom are alike eligible.

ART. IV. — No vacancy in the lowest rank of [judges][b] principal shall be filled but by some one who has served in the station of [judge][a] depute permanent, and that for at least [three] years, on elections posterior to the year [1793.]

ART. V. The [judge[a]] principal of every court, (except the parish [or canton] court, and the metropolitan) shall hold his office for life, unless divested of it in one or other of the following ways: —

1. Resignation.
2. Forfeiture, judicially pronounced.
3. Amotion, pronounced by the suffrages of a majority of the whole number of the electors entitled to vote at the last preceding election, general or particular, holden for the choice of a magistrate, or of a member of the administrative body of his territory.
4. Amotion, pronounced by a majority of the whole number of members of the administrative body next in rank above that of the territory of which he is [judge.[a]]

ART. VI. — By amotion, without forfeiture, a [judge[a]] loses his rank as such, but not his salary, nor the capacity of being rechosen, even immediately.

ART. VII. — [e] Every judge, for the enforcement of his decrees judicially given, has, in case of necessity, the command over all persons, without distinction, within the bounds of his territory, the king only, and judges of equal or superior rank, excepted.

ART. VIII. — When a [judge,[a]] in the exercise of his function, goes out of his own proper territory into another, he takes his [rank and power[f]] with him, subject only to the [rank and power[f]] of the co-ordinate and superior [judges[b]] of that territory.

ART. IX. — A judge principal[e] shall have precedency of all persons over whom he has power, as according to Art. XI.; a judge of appeal taking place of a judge of immediate jurisdiction for the same territory, and judges of the same court according to the priority of their appointment.

ART. X. — *Judicial duty*[g] *ought not to be neglected for any other.* Acceptance of a judicial office vacates every other, judicial or not judicial: and acceptance of an office not judicial, vacates every judicial one. Much less shall a Judge exercise any other profession, such as that of notary, advocate, or attorney. This extends to Judges-Deputes permanent, but not to judges natural, of whom in Tit. V.

ART. XI. — [*A judge ought to stand clear of offence, and of suspicion of partiality.*[h]] No [judge[a]] shall give his vote at any election; nor use any means, direct or indirect, to influence the votes of others.

§ 2. *Pay.*

ART. I. — The expense of the salary of an [instituted judge[a]] of the parish court shall be defrayed by the parish:

[Of a canton court, by the district:]

Of a district court, by the district:

[Of a department court, by the department:]

Of the metropolitan court, by the nation.

ART. II. — On the [day] preceding the day of election, an auction shall be held before the directory of the administrative body of the territory charged with the expense of the salary, under the name of *the Patriotic Auction:* at which the candidates shall be at liberty to attend, in person or by proxy, in order to declare, each of them, what he is willing to give, if anything, to the common fund of the territory, in the event of his being elected to the office. And thereupon the office shall be put up by the president, each bidder being at liberty to advance as often as he thinks proper, in the manner of a common auction.

ART. III. — As soon as it appears that no candidate will make any farther advance, each shall give in an undertaking in writing, in which shall be specified what he binds himself to give, in the event of his being elected.

ART. IV. — At the same time each candidate shall give in an inventory of his estate, as well in possession as in expectancy, together with all charges thereupon, with an estimate

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[a] { PURS. G. Pursuer-general.
{ DEF. G. Defender-General.

[b] { PURS. G. Pursuer-Generals.
{ DEF. G. Defender-Generals.

[c] This article is copied from Tit. IV. Art. V. of the Committee's draught, relative to the District Courts. The specification I have subjoined seems requisite, to prevent uncertainty.

[d] { PURS. G. Office of Pursuer-General.
{ DEF. G. Office of Defender-General.

[e] PURS. G. and DEF. G. Omit this article.

[f] PURS. G. and DEF. G. Authority.

[g] PURS. GEN. and DEF. GEN. To this article substitute — Acceptance of the office of Pursuer [or Defender] General at any court, vacates every other; and acceptance of any other office, vacates that of Pursuer [or Defender] General. Nor shall a Pursuer [or Defender] General exercise the profession of notary, advocate, or attorney. This extends to Pursuer [or Defender] Generals and Deputes permanent.

[h] PURS. GEN. and DEF. GEN. Omit this clause.

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of the clear value thereof in ready money; the whole being signed by the candidate himself, and verified by his oath.

ART. V. — At the same time each candidate shall give in a paper stating his pretensions, of what nature soever, on which he grounds his hopes of being chosen; such as his age, the time during which he has acted in the capacity of a man of law, in what branch of the profession, before what courts, and the like: and such paper shall also be signed by the candidate himself, and verified by his oath.

ART. VI. — The above inventory may either be open or sealed: if sealed, the declaration of its verity, concluding with the signature, shall be on the outside: and it shall be reserved unopened till the event of the election is declared; at which period, if he whose act it is should prove the successful candidate, it shall thereupon be broken open; if not, it shall be returned to him unopened.

ART. VII. — The above-mentioned undertakings and declarations shall forthwith be printed together on the same paper, and a copy given to every elector [ ] days before the election.

ART. VIII. — If, the election having fallen upon one of the bidders, he should fail in complying in any particular with the terms of his engagement, his right to the office shall thereupon cease; and upon a vacancy declared by the competent court, at the instance of the procurator syndic of the administrative body, a new election shall be decreed: but time may be allowed him for performing his engagement, or an equivalent accepted by the court on his application, the procurator syndic being heard on the other side.

ART. IX. — The penalty, in case of falsehood in a declaration given in as above, shall be, if the falsehood were wilful, forfeiture of the office, together with the purchase-money, if any were paid: if the falsehood happened through inadvertence coupled with temerity or negligence, a discretionary fine.

ART. X. — From the salary of every [judge[a]] shall be deducted [25] per cent. upon the interest of the capital representing his private fortune; yet so as that the remainder shall not be less than [one fourth] of the whole; unless in as far as any farther deduction may have been comprised in the undertaking he has delivered in.

ART. XI. — In the case where, his salary not having undergone the utmost deduction of which it is thus susceptible, any accession happens to his fortune by succession, donation, or bequest, to the value of [12,000] livres or upwards, he shall, within [half a year] after effects to that amount have been received, give in a supplemental declaration of the particulars of such accession; and, upon an account settled with the officer who stands charged with the payment of his salary, a proportionable deduction shall take place, from the day when such supplemental declaration was given in.

ART. XII. — The contribution offered at the auction, may be either in ready money, or in any other shape; and in particular, it may be in the shape of a release of the whole, or any part of the appointed salary: and in this case, the deduction prescribed by Art. X. shall be understood to be included; but no offer shall be deemed valid, which would reduce the income of the candidate below the amount of the appointed salary.

ART. XIII. — On the day when the successful candidate is sworn in, and previous to his being sworn in, any member of the corporate assembly, before which he is sworn in, shall be at liberty to put to him all such questions as may tend to ascertain the truth and sufficiency of the several declarations he has given in: and whoever exercises the functions of procurator syndic, is specially charged with this duty, and responsible for the neglect of it.

ART. XIV. — That time and opportunity for scrutinizing the accuracy of the inventory above mentioned may not be wanting, the [judge elect[a]] shall not be sworn in till [ ] days after it has been broken open, nor till [ ] days after it has been published in [*the newspaper most current in the place.*]

ART. XV. — In case of amotion without forfeiture, the salary paid shall be the appointed salary, without deduction: and any contribution that has been given in consequence of the patriotic auction shall be refunded, but without interest.

ART. XVI. — In case of resignation, the contribution shall in like manner be refunded, but no salary continued.

§ 3. *Attendance.*

When Injustice sleeps, Justice may do the same.

ART. I. — The [judgment-seat[1]] ought never to be empty, during any part of the *juridical day*, throughout the year: in an immediate court, never: in a court of appeal, never where there is any cause on the paper, ripe for hearing.

ART. II. — The juridical day shall be of [twelve] hours: viz. from [eight] to [eight,] allowing only [one] hour within that time, viz. between [two] and [three] for refreshment.

This extends not to the judges termed Natural.

[a] { PURS. GEN. Pursuer-General. DEF. GEN. Defender-General.

[1] { PURS. G. Seat of the Pursuer-General. DEF. G. Seat of the Defender-General.

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Art. III. — A [judge immediate,[k]] when absent from the fixed judgment-seat upon out-duty (as upon a view or the examination of a sick person,) ought to take care that it be filled, if possible, by some [judge[a]] depute permanent or occasional, on pain of being responsible for the failure.

Art. IV. — A [judge's[l]] salary shall be reckoned by the day, and paid him every [week] by [*the paymaster.*] It shall be paid him nowhere but upon the [judgment] seat; or, in case of sickness, in his own apartment: a day's pay being deducted for every day of absence, otherwise than upon duty; except vacation-days which he is allowed to take, [thirty] in the course of the year, at his choice; provided that the [judgment] seat be not at any time left vacant.

Art. V. — The day's pay thus to be received shall be a day's pay of the *appointed* salary: the difference, if any, between that and the *clear* salary remaining after the contribution furnished according to § 2, shall be made up by quarterly advances, which the [judge[a]] shall make on [*the usual quarter-days*] to [*the paymaster:*] nor shall he be reimbursed any deficiencies occasioned by unallowed days of absence.

Art. VI. — Declaration to be taken by every [judge[a]] every time he receives his salary: —

I, A. J., solemnly declare, that since the last time of my receiving salary, I have not at any time, during juridical hours, been absent from the duty of my office, except during the following days, viz. [ ], nor absent from the judgment-seat, except the following days, when I was out upon duty, at the places, in the causes, and for the purposes following, viz. [ ].

Art. VII. — A copy of every such declaration, signed by the [judge,[a]] shall, on that same day in which it was made, be hung up, in a conspicuous manner, near the judgment-seat, there to remain till the next quarter-day.

Art. VIII. — A [judge[a]] is to be understood to have been absent from duty on any day, if, in the course of that day, he has not sitten at least [one hour;] and if, during the rest of the day, he has not been within [an hour's] call of the judgment-seat, except when out upon distant duty: word being left with [ ] where he was to be found.

Art. IX. — [Judges[b]] of immediate courts are also bound to go upon duty, in cases of necessity, at all hours, in manner hereinafter specified.

§ 4. *Oath of Office.*

Art. I. — The following oath shall be taken by every [judge[a]] upon his entrance into office. While pronouncing it, he shall stand up before the judgment-seat, in open court, with his left hand on his bosom, and his right lifted up to heaven: —

I, A. J., being raised by the choice of my fellow-citizens to the office of [ ], do solemnly promise and swear:

[Art. II.[m] — 1. That so long as I continue in possession of my said office, I will, to the best of my ability, administer justice to all men alike, to high and to low, to rich and to poor, not suffering myself to be biassed by personal interest, by hope or fear, or by favour or aversion towards any individual or class of men or party in the state.]

Art. III. — 2. That I will not endeavour to keep secret, but on the contrary study by all suitable means to render public, the proceedings belonging to my office, in all cases in which the law ordains them to be public.

Art. IV. — 3. That I will keep secret, to the utmost of my power, the proceedings belonging to my office, in as far the law ordains them to be secret.

Art. V. — 4. That I will not on any account, out of the regular course of justice, give ear to, but indignantly reprove, any application that may be made to me concerning any cause in contemplation of its depending or coming to depend before me, much less give any opinion or advice relative thereto: and that, should any such application be made to me in writing, I will forthwith produce and read the same in open court, although it should be contained in a private and confidential letter.

Art. VI. — 5. That I will at no time accept any gift or favour that shall have been offered me, in the view either of influencing or recompensing my conduct on any particular occasion in the discharge of the functions of my office: and that, in case of my suspecting any favour to have been done or offered me with any such view, I will forthwith declare and make public my suspicion: nor will I knowingly and wittingly suffer any such offer or recompense to be made, on any such account, to any person dependent upon or connected with me; but that, on suspicion of any such offer or recompense, I will forthwith make public such my suspicion, together with the grounds thereof, and the names of all parties concerned.

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[a] { Purs. G. Pursuer-General.
Def. G. Defender-General.

[b] { Purs. G. Pursuer-Generals.
Def. G. Defender-Generals.

[k] Purs. G. Pursuer-General of an immediate Court. Def. G. Defender-General of an immediate Court.

[l] { Purs. G. Pursuer-General's.
Def. G. Defender-General's.

[m] Purs. G. and Def. G. *For this clause substitute the three clauses inserted under* Tit. XI. Art. VII. VIII. IX.

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ART. VII. — 6. That I will not, on the occasion of any pecuniary or other bargain, directly or indirectly avail myself, or endeavour to avail myself, of the influence or authority of my station to obtain any advantage to myself or any other.

ART. VIII. — 7. That I will not take any part whatsoever in any election; nor use any means, direct or indirect, to influence the vote of any other; excepting only the public statement of my pretensions according to law, on any election in which I shall myself be candidate.

ART. IX. — 8. That I will not willingly absent myself from duty, except to the extent of the time allowed me by the law, or in case of unavoidable necessity, resulting from sickness or otherwise; nor then, without making the best provision in my power for keeping my place supplied.

ART. X. — 9. That I will, as far as depends upon me, give to every cause that comes into my hands, the utmost dispatch that shall appear to me consistent with the purposes of justice: nor will I[n] put off any cause, or give to any cause the priority over another, but for special reason publicly declared.

ART. XI. — 10. That I will at no time, through impatience or otherwise, knowingly cause or permit justice to suffer by undue precipitation; and in particular, that I will not bestow less attention upon the cause of the poor than of the rich; considering that, where small rights are seen to be contemned, great ones will not be deemed secure; and that importance depends not upon nominal value, but upon the proportion of the matter in dispute to the circumstances, and its relation to the feelings of the parties.

ART. XII. — 11. That I will not, through favour to those who profit by the expense of the administration of justice, connive at, much less promote, any unnecessary expense; but on the contrary study, as much as in me lies, to confine such expense within the narrowest bounds compatible with the purposes of justice.

ART. XIII. — 12. That I will not, through impatience, or favour to the professional advocate, show discountenance to him who pleads his own cause, or to him who pleads gratuitously the cause of his friend, but rather show indulgence and lend assistance to their weakness.

ART. XIV. — 13. That I will, in all things touching the execution of my office, pay obedience to the law: and that[o] I will do my utmost to carry the same into execution, according to what shall appear to me to be the intent of the legislature for the time being; not presuming to set my own private will above the will of the legislature, even in such cases, if any, where the provisions of the law may appear to me inexpedient; saving only[p] the exercise of such discretionary suspensive power, if any, with which the legislature may have thought fit to entrust [me.[q]]

ART. XV. — 14. That I will not either make or revoke any appointment of a depute, permanent or occasional, with a view to favour or prejudice any suitor otherwise than according to justice, but for the common convenience of suitors, and only to the extent of the number which shall appear to me requisite to that end.

All these engagements I hold myself solemnly pledged to fulfil, by all the regard I owe either to the displeasure of Almighty God, or to the indignation and contempt of my fellow-citizens.

ART. XVI. — A copy of the above oath, printed in the largest type, and on one side only of the paper, with the signature of the [judge[a]] at length to every clause, and at the end the date of the day when signed, shall be kept hung up in a conspicuous situation, near the [judgment[b]] seat, so long as he shall continue in office.

§ 5. *Deputes.*

ART. I. — The duty of the permanent [judge[a]] depute shall be to take the place of his principal, and with the same [powers,[f]] whensoever the principal shall happen to be absent from duty, or preoccupied therein.

ART. II. — The [power[f]] of the [judge[a]] depute permanent shall last as long as his principal continues in the same office, and until a vacancy in the office is filled up; unless the appointment be sooner revoked, which it may be at any time, or terminated in any of the ways in which the office of a judge principal may be vacated.

ART. III. — To the station of [judge[a]] depute permanent, no emolument of any kind shall be annexed; except a habit of office to be worn while on duty, and a mark of honour to be worn at all times during his continuance in the station: and in rank he shall take place next his principal.

ART. IV. — A [judge[a]] principal is civilly responsible for the acts of his deputes, permanent or occasional, having recourse to them for his indemnity: also criminally, in case of his concurring with, or barely conniving at, any behaviour known to him to be criminal on their part.

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[n] PURS. G. and DEF. G. *Insert* — seek to.

[o] PURS. G. and DEF. G. *Insert* — in as far as appertains to my office.

[p] PURS. G. and DEF. G. *Insert* — the reclaiming.

[q] PURS. G. and DEF. G. The Judge.

[a] { PURS. G. Pursuer-General. DEF. G. Defender-General.

[b] { PURS. G. Pursuer-General's. DEF. G. Defender-General's.

[f] PURS. G. and DEF. G. Authority.

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ART. V.—A [judge[a]] depute permanent shall pronounce and sign the same oath as a [judge[a]] principal, and in the same manner; excepting only the words [*permanent or*] in the 14th clause; and making the requisite change at the commencement relative to the style of office.

ART. VI.—A permanent [judge[a]] depute is bound to the same attendance as his principal; except that he is allowed double the number of vacation days in the year (taking them only when his principal is upon duty,) and that he is not liable to be called to night-duty while his principal is in the way.

ART. VII.—Attached in like manner to the office of [judge[a]] principal, shall be the power of appointing occasional [judges[b]] depute for the purpose of performing duty in any particular cause, or relative to any particular point in any particular cause.

ART. VIII.—To the function of occasional [judge[a]] depute shall belong neither emolument nor permanent honour: but for distinction's sake, he may wear, while on duty, a medallion, or other such mark of office.

ART. IX.—An occasional [judge[a]] depute shall, previously to the first time of his taking upon him that function, pronounce and sign, in the presence of the judge who appoints him, [*an oath the same as the above, mutatis mutandis:*] and entry of his having done so, shall forthwith be made in the register-book of the court.

ART. X.—A permanent [judge[a]] depute has in like manner, and under the same responsibility, power of appointing occasional [judges[b]] depute. But it is to be expected that he exercise it only in case of necessity, and for the reason that such appointment cannot be made by the [judge[a]] principal: and such appointment is at any time revocable by the [judge[a]] principal.

ART. XI.—As often as any act is done by or before a [judge[a]] depute, either permanent or occasional, mention shall be made as well upon the face of the act, if written, as upon the register-book, by or before whom; and if in the instance of a [judge[a]] depute occasional, by whom appointed.

ART. XII.—Care ought to be taken to avoid, as much as conveniently may be, the shifting of the same cause to different [judges[b]] unless when the points of which they respectively take cognizance, happen to be totally independent of each other: that [the judge who gives judgment[r]] may be as little as possible under the necessity of taking the grounds of his [opinion[s]] at second hand, from another man.

[a] { PURS. G. Pursuer-General.
{ DEF. G. Defender-General.

[b] { PURS. G. Pursuer-Generals.
{ DEF. G. Defender-Generals.

[r] PURS. G. and DEF. G. each person.

[s] PURS. G. and DEF. G. Proceedings.

§ 6. *Responsibility.*

ART. I.—The punishment of a [judge[a]] for misbehaviour in relation to his office, may be to all or any of the effects following:—

1. Injunction to be more circumspect in future.
2. Suspension from office.
3. Deprivation.
4. Incapacitation for any office, or for certain offices.
5. Fine.
6. Imprisonment.
7. Obligation to make satisfaction, in the way of pecuniary compensation, or otherwise, to the party injured.
8. When the effect of the misbehaviour has been to produce death, or any other corporal suffering, on the part of any one, in the way of punishment, or otherwise; such offence, if accompanied with *evil conscience*,[t] [*mauvaise foi*,] shall be punished as if committed with the offender's own hands.

ART. II.—Judges, pursuer-generals, defender-generals, and their respective deputies, being privy to any misbehaviour, accompanied with evil conscience, on the part of each other, and not informing in due time, are punishable, as for connivance.

TITLE IV.

OF JURISDICTION.

ART. I.—That shall be styled a man's *natural court*, within the territory of which his ordinary and fixed abode is situated; that, his *occasional* court, within the territory of which he happens to be, for the time being: the defendant, for instance, at the instant he receives a summons, or is put under arrest.

ART. II.—Regularly all causes, as well penal as civil, belong to the defendant's *ordinary* court: if he has more ordinary abodes than one, then to the courts corresponding to any one of such abodes, at the option of the pursuer.

ART. III.—But it may be dismissed in the state in which it is, at any time, from any one such court to any other, at the requisition of either party, upon consideration had of the mutual convenience of both.

ART. IV.—A cause may also be commenced in the defendant's *occasional* court; subject in like manner, to be dismissed to his ordinary court.

ART. V.—But a cause relative to immovable property, may be heard and determined in the court *of the subject-matter*. Any such cause may be begun there; and if begun in the defendant's court, or elsewhere, it may be

[t] A full definition of the expression, evil conscience, [*mauvaise foi, mala fides*] is absolutely necessary: but its place is in the Penal Code,

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removed from thence, by either of the parties, unless previously inhibited upon hearing before the judge. But although begun there, or removed thither, it may be dismissed, by the judge, to the defendant's court, if he thinks proper, in consideration of mutual or preponderant convenience.

ART. VI. — A cause relative to specific property not immovable, shall be begun in the court of the defendant; but may be dismissed to the court of the subject-matter, upon consideration of mutual or preponderant convenience.

ART. VII. — A cause relative to a subject-matter situated in more jurisdictions than one, may be heard and determined in any one: and the decision of any one such court may bind the whole subject-matter; but it may be dismissed to any of the others, on consideration of mutual or preponderant convenience.

Any aggregate of different effects, comprised under, or referred to, by one and the same claim, are to be considered to this purpose, as forming one and the same subject-matter: for instance, the stock of a farm, situate within divers territories.

ART. VIII. — A cause may even be dismissed to the *pursuer's court*, or to any foreign court, upon consideration of preponderant convenience: but the difference, in point of convenience, in this case ought to be considerable, and clearly established.

ART. IX. — In the estimation of comparative convenience, the pecuniary circumstances of the parties ought particularly to be taken into account.

ART. X. — A plaintiff, instead of carrying the cause before the *proper* court, whether of the defendant or of the subject-matter, may carry it before the court of any territory adjoining, so that the seat of such adjoining court be not farther distant than that of the proper one: but in so doing, he acts at the peril of costs, should the distance be found greater.

ART. XI. — A plaintiff shall be responsible, in costs and damages, as for vexation, if, without any convenience to himself, and merely with a view of putting his adversary, or any one else, to inconvenience, he commences a suit in, or removes it to, a court known to be inconvenient to them, even though the court be not *improper*: or, even with views of convenience, if the comparative convenience be deemed too slight on his side, to leave him any real hope of seeing the cause retained there.

ART. XII. — Where there are more plaintiffs than one, or more defendants than one, the convenience of every such party is to be taken into the account.

ART. XIII. — By consent of all parties, any civil cause may be carried on, in the first instance, before any immediate court whatever; nor shall it in that case be removed from thence but by like consent, or on account of very evident predominant convenience manifesting itself, since the giving of the consent.

ART. XIV. — But in such cases it behoves the judge to be upon his guard against causes collusively removed to a distant scene, for the purpose of prejudging the interest of a third person: and in such case, besides applying, should the case admit of it, the punishment appointed for this sort of fraudulent attempt, it behoves him, by suitable notices and publications, to render the success of it impracticable elsewhere.

ART. XV. — Causes, penal as well as civil, to which a French citizen is party, and in which the cause of action arose elsewhere than within the territory of France, belong regularly to the defendant's courts: viz. to the courts of appeal, if judgment has already been given in any foreign court; otherwise, to the immediate courts: but in both cases subject to removal, on the ground of preponderate convenience.

ART. XVI. — A plaintiff, who, having commenced a suit in any court, commences another suit, relative to the same matter, in the court of another district, without leave obtained of the court first applied to, is responsible, as for vexation.

ART. XVII. — The judgment, order, and warrant of every court, shall be held good in the courts of every other territory, unless reversed in a court above, or pending the appeal for that purpose. Under that restriction, every court ought to lend its assistance to the execution of the order of every other.

ART. XVIII. — An order or warrant of a foreign court shall, when countersigned by a judge of the territory, receive the same obedience as if issued by him originally. It may even be obeyed without such countersignature; and ought to be, rather than, on account of the delay occasioned by the application for such counter-signature, any failure of justice should ensue: unless the person whose obedience is called for, has reason to suspect the genuineness of it, or to know that the legality of it is disputed by the court of the territory in which such obedience is called for.

ART. XIX. — When a cause, or any incidental operation to be performed in the course of a cause, is brought before a judge, if he finds himself so circumstanced, in any respect, as to stand exposed to the action or influence of any cause of *partiality*, he ought forthwith to make known every such cause, except in the case hereinafter excepted (Art. XXII.) and decline acting accordingly: but if the party to whose prejudice alone such partiality, if it existed and operated, could

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redound, insists upon the judge's taking cognizance notwithstanding, he may, and, rather than there should be any failure of justice, he is bound to do so.

ART. XX. — That no cause of partiality may be undisclosed, any questions tending to produce such disclosure may, at any time, be put to any judge, by or in behalf of any person interested: and to every such question, if pertinent in matter, and not disrespectful in manner, the judge is bound to make answer on the spot.

ART. XXI. — Examples of causes of partiality: —

1. Pecuniary interest of any kind, present or future, certain or contingent.
2. Relationship by blood, or alliance to any of the parties.
3. Intimate acquaintance.
4. Enmity, or litigation.
5. Relation of landlord or tenant.
6. Relation of debtor or creditor, if to an amount of sufficient importance to create any interest or dependence.

In accepting cognizance, or declining it, on such grounds, the judge ought to govern himself rather by the actual affection, than by the external cause.

ART. XXII. — And, forasmuch as there may be secret causes of partiality, which a man could not disclose without great pain and prejudice to himself, a judge may, on such consideration, decline jurisdiction, without cause assigned, whensoever it can be done without failure of justice; doing as much as in him lies, to save the parties from suffering any prejudice thereby.

ART. XXIII. — Examples: —

Where he, or a son, or other such near relation of his, has any secret design, declared, or not yet declared, of courting any woman in marriage; or soliciting preferment, or other favour, at the hands of any person, the same being party to the cause, or connected with one who is.

ART. XXIV. — In any such case he may, without blame, silently transfer the cognizance to a judge-depute, permanent or occasional; (or, if he be a judge-depute, to his principal:) but, if this cannot be done, he may pray the party's excuse, on the general allegation of motives of delicacy, referring him to an unexceptionable judge of some adjoining territory, or in the case of a parish [or canton] court, to the district court above.

ART. XXV. — Although parties may, by consent, carry a cause before a court which is not, in any respect, a *proper one*, yet the judge is not bound, nor ought he to accept the cognizance of it, to the prejudice of the dispatch due to the suitors of his own territory.

ART. XXVI. — The following are the cases in any of which a court may be deemed a *proper* one, to the purpose of obliging the judge to take cognizance: —

If it be —

1. The court of any *defendant*, ordinary or occasional.
2. The *ordinary* court of any *plaintiff*.
3. A court *nearer situated* with respect to the abode of any of the parties than his own.
4. The court of the *subject-matter*.
5. The court of the *cause of action*; *i. e.* where the offence, whether public or private, was committed.
6. In case of contracts, the court of the *territory where the contract* was entered into.
7. A court adjoining to one from whence the cause has been dismissed, on the ground of an avowed cause of partiality on the part of the judge, or through motives of delicacy, as by Art. XXIV.

ART. XXVII. — A judge, though not bound to take cognizance of a cause for the purpose of *definitive* decision, is not the less bound to do any act which, to prevent failure of justice, may be necessary to be performed before the cause can be commenced in any proper court: such as the examination of a witness who is upon the point of departure; the arrestment of such witness if necessary; the examination or seizure of effects capable of supplying evidence; the seizure of effects for the purpose of insuring the responsibility of the defendant in case of conviction; and the like.*

ART. XXVIII. — Complaints of misbehaviour on the part of a judge in the execution of his office, and petitions for expedition on his part in a cause depending before him, shall be preferred only to the court of appeal to which his court is immediately subject. This extends to deputes permanent, as well as to principals.

ART. XXIX. — Other actions, as well criminal as civil, in which a judge is defendant, may be brought in an immediate court of any territory adjoining to his; but may be dismissed from thence to any other except his own, on the ground of preponderant convenience.

TITLE V.

OF THE PARISH COURT.

§ 1. *Of the Judges.*

ART. I. — To the principal ecclesiastical minister of every parish shall belong, within

* A full catalogue of these precautionary expedients belongs to the Code of Procedure.

When a cause is *already commenced* before a competent court, the order or warrant of the judge of that court will serve to compel the assistance of all foreign judges, in virtue of Art. XVII.

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the limits of his parish, all the powers of an immediate judge, under the name of the *judge natural* of that parish; unless where such authority shall have been superseded by the appointment of an *instituted* judge.

ART. II.—The district assembly may, under the controul of the department assembly, decree, with the consent of any parish, that such parish shall thereafter, instead of the *natural*, have an *instituted* judge; fixing a salary, which in that case the parish shall be bound to pay, for the maintenance of the judge.

ART. III.—Upon a vacancy in such office of instituted judge, the authority of the natural judge shall revive of course, and continue till the vacancy has been filled up.

ART. IV.—The power of appointing to the office of parish judge shall belong to the district assembly, subject to the approbation of the municipality of the parish; unless where the district assembly has transferred it altogether to the municipality, which it ought to do, wherever the population and opulence of the parish is such as to afford a sufficient security against an overbearing influence on the election in the hands of a small number of individuals.

ART. V. — In the same way may be appointed any additional number of Fellow-judges, upon the terms of fixing a competent permanent salary for every such judge. But no two judges shall take cognizance at the same time of the same point in the same cause.

ART. VI.—The district assembly, under the controul of the department assembly, may give the local field of jurisdiction of any parish court an extent greater or less in any degree than that of the parish; and to that purpose may new-model the local divisions of any part of their territory, in what manner they deem most convenient; regard being had to extent, population, and the pecuniary faculties of the inhabitants.

ART. VII. — An instituted parish judge shall hold his office for life, unless divested of it in one or other of the following ways, viz. —

1. Resignation.
2. Forfeiture judicially pronounced.
3. Amotion by the suffrages of a majority of the whole number of active citizens belonging to the parochial territory, confirmed by the district assembly.
4. Amotion by the department assembly.

ART. VIII.—Amotion, without forfeiture, shall not deprive him of his salary; but may deprive him, if so ordered, of the faculty of being re-elected into the same seat.

ART. IX.—A cause commenced in a parish court, whether it be before the natural or an instituted judge, may at any time be evoked by the immediate district court, at the instance of any party, but upon consideration had of the mutual convenience of all parties. But the judge of the district court, before he issues the order of evocation, or puts a party to the trouble of showing cause against it, should assure himself, as far as may be done by the examination of the party applying for it, that the power of granting it be not abused to the purpose of vexation or unnecessary delay. And for such vexation, should that appear afterwards to have been the object, the party applying for such order shall be responsible in costs and damages.

ART. X.—Care ought to be taken, on the other hand, in penal causes, by the pursuer-general of the district, that, through simplicity or criminal connivance on the part of a judge of a parish court, the powers of such court be not abused to the purpose of acquitting an offender, by suppression or partial examination of evidence, or to let him off with less punishment than is due; particularly in cases of offences merely public, where, there being no person specially injured, there is no person specially interested to appeal: and to this end he may, without waiting to appeal, evoke the cause to the immediate district court at any time.

ART. XI. — The judge of a parish court may and ought to remit the cause of his own accord to the district court, wheresoever it appears to him that the purposes of justice would be better answered by his remitting it than by his retaining it.

Examples: —

1. Wherever it seems unlikely that the judgment of the parish court, whichever way given, would be acquiesced in: as may happen from the intricacy of the inquiry, or the magnitude of the subject in dispute; especially in a court where there is no other than the natural judge.

2. Where the cause, by reason of its complexity, is of a nature to take up more time than could be spared by the judge from his other official occupations; at the same time that the territory affords no person competent to serve in that instance in quality of judge-depute

ART. XII. — Examples of causes apt to be of a nature particularly complex: —

1. Causes relative to matters of account; especially if the account be mutual, and the items numerous. Every disputed article is in fact the subject of a distinct cause.

2. Bills for work done by artists or others, whose work it is difficult to judge of; such as architects, bailiffs in husbandry, stewards, attornies, and other agents, &c.

3. Causes relative to mercantile accounts.

4. Causes relative to the division of the mass of property left by a person deceased.

5. Causes relative to the division of insolvents' estates.

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6. Causes relative to the division of common lands.

ART. XIII. — But notwithstanding such remittal, the judge, rather than suffer any evidence to be lost, ought to collect and record it, if thereto required on either side.

§ 2. *Place of Judicature.*

ART. I. — In a parish where there is no instituted judge, the ordinary place of judicature shall be the parish church; in which the natural judge or his deputy shall sit, to transact whatsoever judicial business presents itself, every time of divine service, in the face of the congregation, immediately after the service.

ART. II. — Such natural judge, or his deputy, may also do judicial business in his own house: but, for the sake of publicity, in all cases where secresy is not required, he ought rather to prefer the church, if the business can wait without prejudice to the next time of divine service.

ART. III.—In penal causes, other than secret ones, definitive judgment shall never be pronounced by the natural judge elsewhere than in church; though measures in the nature of execution may be taken provisionally, to prevent failure of justice.

ART. IV. — Causes which, being commenced in, or brought to church at a time of divine service, cannot conveniently be finished at that time, may be adjourned, on notice then publicly given, to a time nearer than the next time of divine service.

ART. V. — Every Sunday, before the conclusion of divine service, the minister shall read a list of all the causes (not secret) in which any judicial business has been done in the course of the week, with a brief intimation of the nature of the business done in each.

ART. VI.—Any person who conceives himself to have reason to complain of anything done, or omitted to be done, in the way of judicial business, by such natural judge, out of church, may, on the next Sunday after such ground of complaint comes to his knowledge, or, if on that day prevented without his default, on the first Sunday in which it is in his power, state such ground of complaint to the judge, in the face of the congregation: on which occasion any questions relative thereto may be put to him by or in behalf of the persons interested: and to every such question, if pertinent in matter, and not disrespectful in manner, the judge is bound to make answer on the spot; and, if thereto required, to set down in writing each question, with his answer, or refusal to answer, proceeding in the same manner as in the making up of a record [*procès verbal.*]

ART. VII.—No creation shall be made, as by § 1, Art. II., of an office of parish judge, without making provision at the same time for a *justice-hall*, with a dwelling-house for the judge. And until such hall and dwelling-house are built, or otherwise provided, the same use shall be made of the church, for the purposes of justice, by the instituted, as might be by the natural judge.

ART. VIII. — On Sundays, instead of the justice-hall, the court shall be holden in church, immediately after divine service; and in the case where the jurisdiction of a parish court has been made to extend over divers parishes, then alternately in the churches respectively belonging to those parishes.

ART. IX.—Minutes of the judicial business done in that parish since the last time of sitting there (such minutes being drawn up upon the plan mentioned in Art. V.) shall then also be read by the minister before the conclusion of divine service, having been furnished him for that purpose by the judge.

TITLE VI.

OF THE IMMEDIATE DISTRICT COURT.

ART. I.—To the immediate district court belongs all immediate judicial power (that of the tribunals of exception excepted) within the territorial limits of the district, in concurrence with the several parish [or canton] courts within the district.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

ART. II.—To the judge of the immediate district court, the district assembly, under the controul of the department assembly, may add as many fellow-judges as it thinks proper, with the same powers, rank, and salary; provided that no more than one judge shall act at the same time, on the same point, in the same cause.

ART. III. — The salary of a judge of an immediate district court shall be [ ] livres a-year.

ART. IV. — In the following cases there shall regularly be no appeal from the district court of appeal to any other court: —

1. Embezzlement.
2. Theft.
3. Defraudment, except where operated in the way of forgery.
4. Robbery.
5. The attempt or preparation to commit an offence of any of the above kinds.
6. Homicide, or incendiarism, in prosecution of the design of committing an offence of any of the above kinds.

ART. V. — Appeal, however, shall go, in any of the above cases, to the metropolitan court, upon a requisition made for that purpose, and signed by any of the following sets of persons: —

1. One [fourth] part of the whole num-

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ber of the members of the department assembly.

2. One [fourth] part of the whole number of the members of the district assembly.

3. One [fourth] part of the whole number of the members of the community of the town where the district court of appeal has its seat.

4. One [tenth] part of the whole number of the active citizens of the town, in a town of 4000 inhabitants, one twentieth in one of 8000 inhabitants, one thirtieth in one of 12,000 inhabitants, and so on. [See *Décret sur les Municip.*, Art. V.]

ART. VI.—To the end that due time may not be wanting for the collection of signatures, [two] days at least, both exclusive, shall intervene, in every case, between the day of sentence and the day of execution: within which interval, if three members of any of the administrative bodies, or ten of the active citizens, above mentioned, concur in signing and presenting a preliminary requisition to that purpose, [seven] such entire days, reckoning from the day of presentation, shall be given, for collecting signatures for a definitive requisition.

ART. VII. — But, although appeal be excluded, petitions for expedition may, at any time, and in all causes, be preferred from this court to the court next above, as well as complaints for misbehaviour on the part of the judge.

ART. VIII.—In civil cases, on a judgment of the district court of appeal, execution shall have place provisionally, notwithstanding the appeal; security being exacted, and the other precautions taken which are prescribed in the code of procedure, to prevent the happening of irreparable damage.

ART. IX. — So in penal cases, where the punishment decreed is no other than pecuniary; as likewise with regard to such part of the punishment, if any, as is not contested by the appeal.*

ART. X.—If, for want of such precaution, or through insufficiency of the precaution, irreparable damage should actually ensue, the least punishment to which the judge can be sentenced is, in case of evil intention [*mauvaise foi*,] forfeiture and incapacitation, together with the obligation of making such pecuniary satisfaction as is in his power: in the case of culpable negligence, or temerity, injunction to be more circumspect, together with a fine applicable in part of satisfaction.

ART. XI. — Examples of cases of irreparable damage: —

1. Loss of female honour, by delivery into the power of a false husband, father, guardian, or master.

2. Loss, destruction, or damage of effects possessed of a *value of affection*: such as trees, serving for shelter or ornament; favourite animals; uncopied manuscripts; family pictures; matchless articles of natural history, antiquities, &c.

ART. XII. — In civil cases, and in penal cases, where the punishment decreed is no other than pecuniary, no appeal shall be suffered to go from the district court of appeal till the appellant, if not a pauper, has deposited in the hands of the public advocate, on the other side, [48] livres; which sum shall be forfeited, over and above costs, if the decree of the court above is unfavourable to the appeal, unless the judge of the court above enters upon the instrument of appeal a certificate of reasonable cause.

ART. XIII. — Nor although the defendant be a pauper, unless, previously to the appeal, his advocate-general at the court appealed from shall have entered a like certificate.

ART. XIV. — But if he can find any one to advance the deposit, as likewise any responsible person to be his security for the costs, the appeal shall go, without any such certificate. And for this purpose, two full days shall be allowed him, between the signing of judgment and the execution, saving all precautions necessary to prevent the execution from being eluded.

ART. XV.—Deposit-money thus forfeited shall go to [the paymaster of the district] to the use of the district, and be comprised in the public advocate's quarterly account with [the paymaster,] according to Tit. XIV.

TITLE VII.

OF THE DISTRICT COURT OF APPEAL.

ART. I. — To the district court of appeal belongs the cognizance of all causes (those belonging to the tribunals of exception excepted) in the way of appeal, as well from the immediate district court as from the several parish [or canton] courts within the district.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

ART. II. — To the judge of the district court of appeal may be added fellow-judges, in like manner as to the judge of the immediate district court, according to Tit. VI.

ART. III. — The salary of a judge of a district court of appeal shall be [ ] livres a-year.

TITLE VIII.

OF THE DEPARTMENT COURT.

ART. I.—To the department court belongs the cognizance of all causes in the way of appeal from the district court of appeal; or of complaint for misbehaviour on the part of

* This alludes to the appeal *a nimiâ*, or *ab incongruâ*.

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the judge, or of petition for expedition; but of no cause in the first instance.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

ART. II.—To the judge of the department court, the department assembly may add as many fellow-judges as it thinks proper, with the same powers, rank, and salary: provided that no more than one judge shall act at the same time, on the same point of the same cause.

ART. III.—The salary of a judge of a department court shall be [ ] livres.

TITLE IX.

OF THE METROPOLITAN COURT.

ART. I.—The judges of the metropolitan court shall be elected by the national assembly. No vacancy shall be filled but out of the rank of judges next below.

ART. II. — A judge of the metropolitan court shall hold his office for life, unless vacated in one or other of the following ways:

1. Resignation.
2. Forfeiture judicially pronounced.
3. A motion by a majority of all the members entitled to vote in the national assembly.
4. A motion by a majority of all the electors and members entitled to vote at the last preceding election, general or particular, for the choice of a judge of the metropolitan court, or of a member of the national assembly.

ART. III.—By a motion without forfeiture, a metropolitan judge loses his judicial rank, but not his salary. He also loses his capacity of being re-elected during the continuance of the same legislature.

For other matters touching its jurisdiction, see Tit. II. III. IV. and V.

ART. IV. — The salary of a judge of the metropolitan court shall be [ ] livres.

ART. V.—To the metropolitan court shall belong [ ] judges, with equal power, rank, and salary: provided that no more than one judge shall act at the same time, on the same point, in the same cause. But as many as happen at any time to be unemployed, may, and ought to sit as assessors without vote.

ART. VI.—To the metropolitan court belongs the cognizance of all causes not particularly excepted, in the way of appeal from the department court [or, if no department courts, from the district courts of appeal.]

Also complaints for misbehaviour, and petitions for expedition, even in such cases as are excluded from appeal.

ART. VII.—Business, as it comes in, shall be distributed among the several judges by rotation.

ART. VIII. — From the decree of a judge of the metropolitan court, neither can any appeal, nor any petition for expedition, be preferred, without being accompanied with a complaint of misbehaviour on the part of the judge: nor can any order for expedition be issued to him, nor any change be made in his decree, without censure passed on him at the same time.

TITLE X.

NATIONAL ASSEMBLY COURT.

ART. I.—Complaint against a judge of the metropolitan court for misbehaviour cannot be made anywhere but in the national assembly, nor there unless signed by [six] members.

ART. II. — If received by the assembly, it shall appoint two committees, one to try and report, the other to prosecute.

ART. III. — Such trial shall be conducted, from beginning to end, with open doors, and with the utmost possible degree of publicity.

ART. IV. — No criminal accusation shall be preferred in the national assembly against any other person whatever than a judge of the metropolitan court, except for offences committed in face of the assembly.

TITLE XI.

OF PURSUER-GENERALS.

ART. I. [u]—The functions of a pursuer-general of an immediate court shall be, in civil matters —

1. To reclaim the execution of all laws in the execution of which no individual has any special interest, and of those in the execution of which the nation has a special interest of its own, superadded to that of individuals.
2. [u]To act on behalf of the king in his individual capacity, as well in the character of defendant as that of plaintiff.
3. To act on behalf of every [*plaintiff*[v]] who, through poverty and want of friends, is unable to engage any other advocate.
4. To obviate any prejudice he sees likely to result to justice from any oversight or unskilfulness on the part of a [*plaintiff*[v]] who pleads his own cause, or on the part of his advocate, gratuitous or professional.

ART. II. — In penal matters —

1. To superintend the proceedings of every private prosecutor; to assist him, in case of oversight or unskilfulness; and to watch over him, and prevent collusion with the defendant.
2. To reclaim the execution of all penal laws, by performing the functions of prosecutor where no private prosecutor has first

[u] DEF. G. Omit this paragraph.
[v] DEF. G. Defendant.

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presented himself, and in the cases, if any, where individuals are not admitted to prosecute.

ART. III. — In cases where the administrative body of the territory for which he serves, is empowered to act in the character of pursuer by the hands of its procurator-syndic, and the pursuer-general is not engaged by his office in the other side, he has concurrent authority with such procurator-syndic, each cause belonging to that one of them who is first seized of it. But, to prevent collusion or remissness, each of them has a right to receive communication of all such business carried on by the other.

ART. IV. — Where a [*pursuer* [v]] whose interests a [*pursuer-general* [w]] has espoused, happens to be made [*defendant* [x]] in a cross cause growing out of that in which he was [*pursuer*,[v]] the [*pursuer-general*,[w]] and not the [*defender-general*,[y]] shall take in charge the interests of such party in such derivative cause.

ART. V.—In a court of appeal, the client of the [*pursuer-general* [w]] shall be the party who was the client of the [*pursuer-general* [w]] of the immediate court in the original cause.

ART. VI.—*Clauses in the oath of office to be taken by the pursuer-generals, in the room of clause I. in the oath appointed to be taken by judges:* —

1. That I will, at all times, be vigilant in looking out for, forward in entering upon, and faithful in executing, all such business as the law has given in charge; not suffering myself to be turned aside from the pursuit or the performance of it, by indolence, or by interest, by hope or by fear, by affection or by enmity towards any individual, or class of men, or party, in the state.

ART. VII. — 3. That in my zeal on behalf of the cause I have in charge, I will not seek to serve it at the expense of truth or justice. I will not use any endeavours to cause to be received as true, any fact which I do not believe to be true; nor as just, any conclusion which I do not believe to be just; nor my persuasion of the truth of any fact, or the justice of any conclusion, as stronger than it really is: nor will I seek to put upon the conduct of any man, any colouring other than what I believe to be true; nor will I exercise partiality in favour of the party whose interest I espouse, any otherwise than by doing such acts as justice requires to be done, and giving such counsel as justice requires to be given, on his behalf, and by applying my faculties to the discovering and presenting of such considerations as make in favour of his cause, in preference to such as make against it.

☞ *For the provisions relative to pursuer-generals*, see Tit. III. *Of Judges.*

TITLE XII.

OF DEFENDER-GENERALS.

ART. I. — The functions of a defender-general of an immediate court shall be, in matters civil as well as penal —

1. To act on behalf of every defendant who, through poverty and want of friends, is unable to engage any other advocate.

2. To obviate any prejudice he sees likely to result to justice, from any oversight or unskilfulness on the part of a defendant who pleads his own cause, or on the part of his private advocate, gratuitous or professional.

ART. II. — To act on behalf of the administrative body of the territory, for which he serves, in cases where the pursuer-general is engaged on the other side. But this in concurrence with the procurator-syndic of that body, in the same manner as the pursuer-general would have had to act.

☞ *For the other provisions relative to defender-generals*, see Tit. III. *Of Judges*, and Tit. XI. *Of Pursuer-Generals.*

TITLE XIII.

OF SECRET CAUSES.*

ART. I.—In certain causes the proceedings shall be secret throughout, except in the courts hereinafter mentioned. These are —

I. Where secresy is necessary to the peace or honour of families, by reason of the dishonour, or other uneasiness, which might ensue, if the disagreements and weaknesses, and other unprosperous circumstances of their members, were to be divulged to the world at large.

On this ground, the following causes are to be classed under the head of secret causes:—

1. Generally all causes in which near relations are concerned against each other.

2. Also causes betwixt guardian and ward, in as far as the propriety of the conduct of the ward comes in question.

ART. II.—Under the denomination of near relations are to be comprehended, for this

[v] DEF. G. Defendant.
[w] DEF. G. Defender-General.
[x] DEF. G. become Pursuer.
[y] DEF. G. Pursuer-General.

* This Title belongs properly to the Code of Procedure. A general sketch of the contents is given here, to serve as an object of comparison with the article of the Committee's Draught, [TIT. I. ART. 2.] which touches upon the topic of publicity, and that part which concerns the establishment of family-tribunals [TIT. IX. ART. 11, 12, 13, and 14;] an establishment, the design of which, it is conceived, would be better answered by a modification thus given to the proceedings of the ordinary courts.

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purpose, persons related to an individual in any of the following degrees, by blood or alliance; viz.

1. Wife, or husband.
2. Descendants.
3. Father, mother, and other relations in the descending line.
4. Brethren and sisters, of the whole or half blood, and their descendants.
5. Uncles and aunts, of the whole or half blood, in any degree.

ART. III.—To this class belong, in a more especial manner, causes of the following nature: —

1. Causes between husband and wife, for disobedience, extravagance, hard treatment, adultery, or impotence.
2. Causes between parent and child for extravagance, undutifulness, idleness, theft, embezzlement, defraudment, indecorum, on one side; or hard treatment, or neglect of education, improper education, or exposal of chastity, on the other.
3. Prosecutions for incest; and causes in the course of which incest may come to be proved, or to be attempted to be proved.
4. Causes relative to the pregnancy or delivery of unmarried women, and the discovery of the father of the child.

ART. IV. — But the secresy shall not be carried beyond the occasion; insomuch that, in relation to any point in respect to which it may be clear that neither the honour nor the peace of the parties litigant, or any of them, can be affected by the publicity of the proceedings, the same publicity shall be observed as in other cases.

Such may be, for example,

1. Any mere question of law relative to a family settlement, or a will, or a share in the effects of an intestate.
2. Any question of fact in any such cause not affecting the moral character of the party, or relative to the conduct of some stranger.

ART. V.—II. Where secresy is dictated by the regard due to decency. To this class belong such causes as are covered with the veil of secresy, in order to avoid wounding or enfeebling the sentiment of modesty, as well on the part of the auditors as the persons concerned, viz.

Causes, as well penal as civil, relative to any irregularities of the venereal appetite; including several of those mentioned under the former head.

ART. VI.—In causes appointed to be kept secret for the peace or honour of families, the secret mode of proceeding shall not be observed unless on the requisition of some one at least of the parties.

ART. VII. — Causes appointed to be kept secret for the sake of decency, shall be kept so although the parties were all of them to desire the contrary.

ART. VIII.—The seal of secresy, having been once affixed, shall not be taken off, unless in the cases mentioned in Art. IV. until after judgment in the last instance: nor then, unless some one of the parties demands it; alleging for the ground of his demand, partiality on the part of the judges, or some one of them, through whose hands it has passed. The cause shall in that case be re-heard publicly before a judge of equal rank, to be named by the supreme court; and if such charge of partiality shall have been deemed rash or malicious, the offender shall suffer as well for the wound given to the peace or honour of the family, as for the calumny against the judge.

ART. IX. — III. In certain causes, secresy shall be observed at the outset, to prevent falsehood from gaining instruction. These are —

1. All penal causes admitting of corporal punishment, afflictive or ignominious, or imprisonment, or banishment for any longer term than a year.
2. All causes, civil as well as penal, upon special and satisfactory reason given for apprehending a confederacy in falsehood.

In the latter class of causes, the examination of each examinant, whether party or witness, may, and in the former shall, of course, be performed in secret; and such secret examination may even be repeated, so long as it is thought proper by the judge to examine them separately: but judgment shall never be given until the minutes of secret examination have been read in public, the examinants re-examined in public, with liberty to object to the verity of the minutes, and confrontation, where proper and possible, performed, and parties and advocates on both sides heard in argument.

ART. X. — Out of regard to pecuniary reputation, certain inquiries shall, at the requisition of any party, be made in the secret mode, in the course of whatever cause they come to be made. These are —

1. Inquiries made relative to the pecuniary circumstances of both or either of the parties, for the purpose of awarding satisfaction in case of an offence other than infamous.
2. Inquiries made, in the same view, relative to the circumstances of the party injured, in case of an infamous offence.
3. Inquiries made, in cases of debt, into the pecuniary circumstances of either party, for the purpose of ascertaining whether any and what respite shall be granted to the debtor.

ART. XI. — Present at all secret business shall be a pursuer-general and a defender-general; and, if necessary, a secretary of the court, to take the minutes, sworn to secresy in like manner as the magistrates above mentioned. [See Tit. III. § 4.]

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ART. XII.—For all secret business a particular register-book shall be kept under the name of the *secret register-book*.

ART. XIII. — Secret business, unless in case of out-door duty, shall be transacted in the judge's chamber; the adjournment being performed only for the moment in incidental inquiries, and the auditory left sitting in the public place of justice

TITLE XIV.

PAUPERS.

ART. I.—The judge, if upon report by the pursuer-general or the defender-general, as the case is, it shall appear to him that, for the rendering of justice in any cause, certain expenses are necessary on the part of either of the parties, who is unable to defray them, shall draw upon [the paymaster of the territory] in favour of such advocate, to the amount of such expense; and so from time to time, as often as there shall be occasion, during the continuance of the cause.

ART. II. — In such draught shall be specified a particular of all the several purposes for which the money shall be deemed necessary by computation: and it shall be signed by the public advocate of the pauper, as well as by the judge.

ART. III. — [Four] times in every year [viz. on the quarter-day in each quarter,] the public advocates of the territory shall each deliver in to [the paymaster] an account of the disbursements of all monies so drawn for and received, distinguishing under the head of each cause, the monies received and disbursed on account of that cause; and stating each item of disbursement, according to the time on which, and the particular service for which it was made: and shall. at the time of delivering in such account, refund the whole of the balance which the account admits to be in their hands.

ART. IV. — If the adversary of the pauper on whose account money has been drawn for, as above, should be a solvent person, and it should be thought fit, by the judge, to charge him with costs, the amount shall be paid to the pauper's public advocate, and by him refunded to the [*paymaster of the territory*] at the next periodical time of settling their accounts.

TITLE XV.

OF TRIAL BY JURY.

ART. I. — Trial by jury shall be awarded no otherwise, than upon requisition made by some one of the sets of persons, at whose requisition appeal goes, according to Tit. VI. from the district court of appeal to the metropolitan court, in the cases not regularly appealable: nor shall requisition be made for that purpose, until the judgment of the metropolitan court has been sent down to the immediate district court, where execution, if awarded, is to be performed.

ART. II. — In the following cases alone, requisition for such purpose may be made:—

1. Where the judgment of the metropolitan court imports sentence of death, or indelible corporal punishment, or afflictive corporal punishment, or ignominious corporal punishment, or imprisonment, or banishment from the kingdom for a longer term than a year.

2. When the decision of the metropolitan court, respecting the principal question of fact, is opposite to the decisions of both the courts below.

ART. III. — In all cases where such requisition is admitted, the judgment of the metropolitan court, after having been publicly read in the immediate court, by which execution is to be awarded, shall be hung up, in conspicuous characters, in a particular part of the court appropriated to that purpose: and, to give time for the collection of signatures, [two] days, both exclusive, shall intervene in such case, between the hanging up of such judgment and the execution of the sentence, for a preliminary requisition, as according to Tit. VI.; and [seven] entire days more, reckoning from the time of presentation, for a definitive requisition.

ART. IV. — Upon a rehearing thus laid before a jury, all witnesses ought regularly to be re-examined: but as it may happen that, in a cause ever so strongly contested, there may be certain points, the evidence respecting which may appear to every one incontestible; and that the abode of the witnesses, relative to those points, may be in foreign parts, or very distant parts of the kingdom; the persons requiring may, in their requisition, distinguish such witnesses from the rest: in which case, the reading of the minutes of what passed on the examination of such witnesses at the former trial, shall stand in the place of their re-examination. And it is the duty of the judge to point out to the subscribers, when attending him with the requisition, all witnesses so circumstanced.

ART. V. — The manner of striking a jury shall be as follows:—

Forty-two persons shall be taken, by lot, out of the list of the active citizens dwelling in the town, or in any parish of which the church is not more than one great league distant from the town-house: the lottery being drawn by [*the keeper of the list*,] in the presence of both parties, or their representatives. Of these forty-two, the pursuer and the defendant shall each strike off twelve: the remaining eighteen shall be bound to attend:

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of those who attend, an equal number shall again be stricken off by the parties (if there remain an odd one, that odd one by the judge,) till the number be reduced to twelve; these twelve shall sit upon the trial.

ART. VI. — The judge to try the cause shall be a judge of appeal of some one of the districts contiguous to that by the immediate court whereof the sentence would have been to be executed: the choice to be determined by a lottery, drawn in presence of the parties, or their representatives, by the judge of such immediate court: provided that the judge so chosen may sit by deputy, if he thinks proper.

ART. VII. — The punishment of a juror, for non-attendance, shall be a fine of [12] livres: and if the cause should be delayed for want of a sufficient number, the absentees shall, amongst them, be chargeable with the costs occasioned by such delay.

ART. VIII. — To prevent such delay, the number deficient may be supplied amongst the bystanders, to be named upon the spot, by the judge; and each person so named, if possessed of the qualifications of an active citizen, shall, unless objected to by either party, for specific and sufficient cause, be forthwith aggregated to such of the jurymen as appear, until the full number be completed.

ART. IX. — Persons who have once served on a jury, or attended for that purpose, shall stand exempted from taking their chance a second time, until the number remaining liable shall be reduced below eighty-five.

ART. X. — When the evidence has been gone through, the arguments heard, and the judge's charge delivered, balloting-balls shall be delivered to the jury, three to each: one black one, to denote conviction; one white, to denote acquittal; and the one half black and half white, to denote uncertainty. To give their votes, each shall secretly deposit, in one common box, provided for that purpose, the ball expressive of the state of his opinion, returning the two others, with equal secresy, into the common box, or bag, in which they were brought.

The defendant shall stand acquitted, if more white balls than one are found in the voting-box, or if there be not so many as seven black ones.

ART. XI. — If in the course of this rehearing any fresh matter comes out, tending to aggravate or extenuate the offence, the judge, in case of conviction, may vary the punishment accordingly: but if not, it is expected of him that he adhere to the sentence pronounced by the metropolitan court.

ART. XII. — At the trial, either party may object to any juryman, on the ground of partiality: and such objection shall be allowed or disallowed by the judge, according as, upon due examination, he finds reasonable. But every such objection shall be made, before the parties are admitted to strike off jurors, without cause assigned: nor shall either party be admitted to object to any juror, after the numbers have been reduced to twelve, unless he show, to the satisfaction of the judge, that good cause of objection, on his part, lay to all those whom he struck off, out of the whole number of forty-two, at the time of the drawing of the lottery.

ART. XIII. — Causes of partiality to warrant the challenging of a juror, may be any of those specified in Tit. IV., to which may be added, the case where there is reason to think that the juror challenged is, by reason of some party affection, prejudiced against the challenger. But the allowing or disallowing the challenge rests, in all cases, upon the discretion of the judge, determining upon the party's own examination, upon oath, and any other evidence that happens to be forthcoming upon the spot.

ART. XIV.—The metropolitan court may, if it thinks proper, order that, in the event of a requisition made for a jury, the minutes of the former trial, as well as of the proceedings in the appeals, shall be printed, at the expense, and sold for the account, of the district where the trial will be: in that case, the trial before the jury shall not come on till the minutes above mentioned have been printed, and a copy delivered to each of the eighteen jurymen remaining after the lottery has been drawn, and the jury reduced to that number, from forty-two, as by Art. V.

The jury, if, upon comparison of the evidence upon the trial before them with the evidence on the former trials, they should deem the requisition of a jury to have been frivolous, and made without reasonable cause, may, if they think fit, decree that the loss, if any, upon the publication of the minutes above mentioned, shall be borne jointly by the persons by whom the requisition was signed.

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